

# ELLIS:LAWHORNE

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March 3, 2005

## **VIA HAND-DELIVERY**

The Honorable Charles L.A. Terreni  
Executive Director  
**SC Public Service Commission**  
P.O. Drawer 11649  
Columbia, SC 29211

RE: Application of UCN, Inc. for Amendment of Its Existing Certificate of Public Convenience and Necessity to Transact Business of a Reseller and Facilities-Based Provider of Local Exchange Services, for Approval of its Initial Tariff, and for Flexible Regulation First Granted in Docket 97-467-C  
**Our File No. 981-10287**

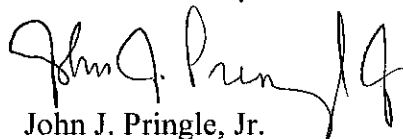
Dear Mr. Terreni:

Enclosed is the original and ten (10) copies of the **Application** filed on behalf of UCN, Inc. in the above-referenced matter.

Please acknowledge your receipt of this document by file-stamping the copy of this letter enclosed, and returning it via the person delivering same.

If you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,



John J. Pringle, Jr.

JJP/cr

cc: Ms. Kimm Partridge [via first-class mail service]  
Jonathan Marashlian, Esquire [via first-class mail service]  
Office of Regulatory Staff [via electronic and first-class mail service]

Enclosures

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BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

DOCKET NO. \_\_\_\_\_

In the Matter of	)	
The Application of UCN, Inc. for Amendment of its Existing Certificate	)	
of Public Convenience and Necessity to Transact the Business of a	)	
Reseller and Facilities Based Provider of Local Exchange Services.	)	APPLICATION
for Approval of its Initial Tariff, and for Flexible Regulation First	)	
Granted in Docket No. 97-467-C	)	

**APPLICATION FOR AUTHORIZATION**

UCN, Inc. (hereinafter "Applicant" or "UCN") respectfully requests that the Public Service Commission of South Carolina ("Commission") amend the Certificate of Public Convenience and Necessity held by Applicant and grant Applicant authority, pursuant to S.C. Code Annotated Sections 58-9-280 of the Commission's Rules of Practice and Procedure to provide local exchange telecommunications services to the public within South Carolina through the use of the Applicant's facilities or through the resale of similar services offered by other local exchange carriers in the state. Applicant also requests flexible regulation for its telecommunications services as the Commission granted in Order No. 98-165 in Docket No. 97-467-C. Applicant further requests, pursuant to R. 103-601(3), that the Commission waive certain Commission Rules as set out herein. Applicant, for purposes of verification, and in evidence of its fitness to operate and the public need for its services, offers the following information in support of this Application:

### Identification of the Applicant

1. Applicant maintains its headquarters at 14870 South Pony Express Road, Bluffdale, Utah 84065. Applicant is incorporated under the laws of the State of Delaware. A copy of the Company's Articles of Incorporation is attached hereto as **Exhibit A**. Applicant has authority to transact business within the State of South Carolina as a foreign corporation. A copy of the qualifying document is set forth in **Exhibit B** hereto.

2. Correspondence regarding this Application should be directed to:

John J. Pringle, Jr., Esq.  
Ellis, Lawhorne & Sims, P.A.  
P.O. Box 2285  
Columbia, South Carolina 29202  
(803) 343-1270 – Phone  
(803) 799-8479 – Facsimile  
E-mail: [jpringle@ellislawhorne.com](mailto:jpringle@ellislawhorne.com)

with a copy to:

Jonathan S. Marashlian, Esq.  
Regulatory Counsel  
The Helein Law Group, LLLP  
8180 Greensboro Drive, Suite 700  
McLean, VA 22102  
(703) 714-1313 - Phone  
(703) 714-1330 – Facsimile  
E-mail: [jsm@thlglaw.com](mailto:jsm@thlglaw.com)

### Description of Authority Requested And Services to Be Provided

3. Applicant seeks authority to operate as a reseller and facilities-based provider of local exchange telecommunications services to the public on a statewide basis or to the extent the zones and exchanges of incumbent local exchange carriers operating in the state are open to competitive entry. UCN currently provides switched and dedicated resold interexchange telecommunications services in South Carolina pursuant to a Certificate originally issued by the Commission to Buyers United International, Inc. via Order No. 1999-2 in Docket No. 98-375-C

issued on January 4, 1999. Via two requests to the Commission to effect name changes in Docket No. 98-375-C, (Order Nos. 2003-473 and 2004-588), "UCN, Inc." is currently the holder of the Certificate in question. UCN contracts with a number of third party providers for the right to resell the various interexchange telecommunication services and products they provide, and then offers all of these various services to its customers. UCN also operates an enhanced IP network connected to advanced customer contact handling/management software applications that enable UCN to offer enhanced call routing and management services to targeted small and medium sized enterprise ("SME") customers. The variety of services and products offered by UCN allow customers to buy only those telecommunications services they need from one source, combine those services in a customized package, receive one bill for those services, and make one call to UCN if a service problem or billing issue arises.

By this Application, UCN seeks additional authority to allow the company to offer existing and prospective customers resold and/or facilities-based (leased) competitive local exchange telecommunications services. Applicant seeks authority to provide these services throughout the entire state of South Carolina, or to the extent the zones and exchanges of incumbent local exchange carriers operating in the state are open to competitive entry. The resold and facilities-based local exchange services Applicant proposes to offer include business class local loop connectivity and transmission, including 2-wire, 4-wire, DS-0, DS-1, DS-3, and OCN local loops necessary to connect customers to UCN's nearest point of presence (POP). These services will initially be provided through commercial resale agreements with facilities-based competitive suppliers, such as AT&T, MCI, and Level 3. Applicant reserves the ability to resell or lease network elements from BellSouth Telecommunications, Inc. ("BellSouth"), Verizon, and other competitively open incumbent local exchange carriers ("ILECs") in the future, as the market for its services dictates.

4. Applicant does not intend to provide 900 or 700 services.

5. Applicant currently owns no transmission facilities. Applicant will offer service to its subscribers using facilities of the communications networks facilities-based IXC's and the local exchange telephone companies ("LECs").

6. Applicant does not currently provide local exchange service in any state.

Applicant is currently negotiating commercial resale agreements with major facilities-based competitive local exchange carriers, including AT&T, MCI and Level 3. Applicant intends to finalize negotiations in the second to third quarter of 2005. Applicant plans to offer local exchange services in states where it is licensed, tariffed, and subject to a commercial resale agreement with one or more of the above-listed carriers by the third or fourth quarter of 2005.

Initially, Applicant will provide service exclusively through commercial resale agreements and has no intention of deploying its own facilities or leasing facilities of incumbent local exchange provider(s). Applicant is seeking facilities-based authority so that in the future it has the option of deploying its own facilities and/or leasing ILEC facilities. However, Applicant has no set timetable to do so. Therefore, Applicant does not currently have a capital/construction plan and budget.

7. Applicant will abide by all rules governing telecommunications resellers and facilities-based providers that the Commission has promulgated or may promulgate in the future, unless application of such rules is specifically waived by the Commission.

8. Applicant is committed to the use of ethical sales practices. All individuals selling and marketing Applicant's services must commit to market Applicant's services in a professional manner, and to fairly and accurately portray Applicant's services and the charges for them.

### **Description and Fitness of Applicant**

11. Applicant's management team has extensive managerial, financial and technical experience with which to execute the business plan described herein. In support of Applicant's managerial and technical ability to provide the services for which authority is sought herein, Applicant submits a description of the background and experience of its current management team as **Exhibit C**. In support of Applicant's financial ability to provide the services contemplated herein, Applicant attaches its Financials as **Exhibit D**.

### **Public Interest Considerations**

12. Applicant's entry into the South Carolina marketplace is in the public interest because Applicant intends to make a uniquely attractive blend of service quality, network management and reporting, and low rates available.

13. In addition to the direct benefits delivered to the public by its services, Applicant's entry into the South Carolina marketplace will benefit the public indirectly by increasing competition, resulting in more efficient pricing and improved service quality and expanded service options.

### **Initial Proposed Tariff**

14. Applicant proposes to offer service pursuant to the rules, regulations, rates and other terms and conditions included in Applicant's initial proposed tariff which is attached hereto as **Exhibit E**. Billing, payment, credit, deposit and collection terms are set forth in Applicant's proposed tariff.

### **Waivers and Regulatory Treatment**

15. Applicant requests, pursuant to 26 S.C. Code Ann. Regs. 103-610, that the Commission allow the Applicant to keep its books and records at its home office in Utah. It would present a hardship upon the company to maintain a separate set of books in South Carolina since

the company's headquarters are located in Utah. The company will have a registered agent located within the state and understands that it will bear any costs associated with the Commission's inspection of its books and records.

16. Requested Waivers. Commission Rule 103-603(3) provides that in "any case where compliance with any...rules and regulations introduces unusual difficulty such rule or regulation may be waived by the Commission upon a finding by the Commission that such a waiver is in the public interest." As described below, compliance with certain Commission rules will "introduce unusual difficulty" for the Applicant. Additionally, Applicant asserts that granting the waivers requested herein are "in the public interest".

- (a) Retention of Records (R. 103-611). Except to the extent that the Rules of the Federal Communications Commission require Applicant to keep certain of its books and records in accordance with the Uniform System of Accounts, Applicant requests that the Commission allow it to keep all other books and records in conformance with Generally Accepted Accounting Principles.
- (b) Operating Area Maps (R. 103-612.2.3). Applicant intends to offer service throughout the geographic service areas of the incumbent local exchange carriers operating in the State of South Carolina. Therefore, Applicant requests that the Commission forbear from requiring Applicant to "file with this Commission a map or maps showing its certificated area and/or exchange service area(s)."
- (c) Directories (R. 103-631). Applicant does not intend to publish telephone directories. However, Applicant will contract with its underlying local exchange carriers and/or their directory publishing affiliates, to ensure that Applicant's customers are included in the applicable directory.

17. Flexible Regulation of Local Exchange Services. Applicant requests that the Commission allow Applicant to employ a flexible local exchange rate structure first authorized by Commission Order No. 98-165 in Docket No. 97-467-C. Specifically, Applicant requests that the Commission:

- (a) adopt for Applicant's local exchange services a competitive rate structure incorporating maximum rate levels with flexibility for Applicant to adjust its rates below the maximum rate levels; and
- (b) permit Applicant's local exchange service tariff filings to be presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of such filings. At the discretion of the Commission, such filings would be suspended pending further order of the Commission and any such filings would be subject to the same monitoring process as is applied to other, similarly situated carriers.

### Conclusion

18. A decision by the Commission to grant Applicant a Certificate of Public Convenience and Necessity is plainly in the public interest. Applicant will introduce important new products and services at very competitive rates as well as enhance the competitiveness of the overall local telecommunications market in South Carolina.

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WHEREFORE, UCN, INC., respectfully requests that this Commission amend the Company's existing Certificate grant it authority to transact the business of a provider of local exchange telecommunications services within the State of South Carolina, regulate its local exchange services according to the flexible regulatory scheme outlined herein, and grant such other relief as is just and proper.

Dated this 3rd day of March, 2005.

Respectfully submitted,  
UCN, Inc.

By:

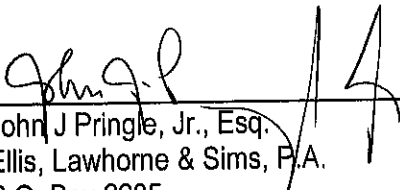
  
\_\_\_\_\_  
John J. Pringle, Jr., Esq.  
Ellis, Lawhorne & Sims, P.A.  
P.O. Box 2285  
Columbia, South Carolina 29202

EXHIBIT A

Articles of Incorporation

# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "UCN, INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF INCORPORATION, FILED THE FIFTEENTH DAY OF MARCH, A.D. 1999, AT 9 O'CLOCK A.M.

CERTIFICATE OF MERGER, FILED THE THIRTEENTH DAY OF APRIL, A.D. 1999, AT 9 O'CLOCK A.M.

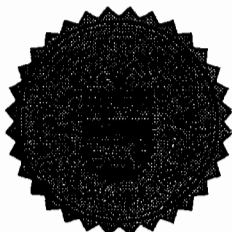
CERTIFICATE OF DESIGNATION, FILED THE TWENTY-THIRD DAY OF JUNE, A.D. 1999, AT 9 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, CHANGING ITS NAME FROM "BUI, INC." TO "BUYERSONLINE.COM, INC.", FILED THE NINETEENTH DAY OF APRIL, A.D. 2000, AT 9 O'CLOCK A.M.

CERTIFICATE OF DESIGNATION, FILED THE TWENTY-EIGHTH DAY OF SEPTEMBER, A.D. 2000, AT 9 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-FOURTH DAY OF OCTOBER, A.D. 2000, AT 9 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, CHANGING ITS NAME FROM "BUYERSONLINE.COM, INC." TO "BUYERS UNITED, INC.", FILED THE



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

3016691 8100H

AUTHENTICATION: 3467337

040808801

DATE: 11-09-04

# Delaware

PAGE 2

*The First State*

FIRST DAY OF NOVEMBER, A.D. 2001, AT 9 O'CLOCK A.M.

CERTIFICATE OF OWNERSHIP, FILED THE THIRTIETH DAY OF  
DECEMBER, A.D. 2002, AT 5 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF  
THE AFORESAID CERTIFICATE OF OWNERSHIP IS THE THIRTY-FIRST DAY  
OF DECEMBER, A.D. 2002.

CERTIFICATE OF OWNERSHIP, FILED THE THIRTIETH DAY OF  
DECEMBER, A.D. 2002, AT 5 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF  
THE AFORESAID CERTIFICATE OF OWNERSHIP IS THE THIRTY-FIRST DAY  
OF DECEMBER, A.D. 2002.

CERTIFICATE OF AMENDMENT, CHANGING ITS NAME FROM "BUYERS  
UNITED, INC." TO "UCN, INC.", FILED THE THIRTIETH DAY OF JUNE,  
A.D. 2004, AT 4:25 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF  
THE AFORESAID CERTIFICATE OF AMENDMENT IS THE FIFTEENTH DAY OF  
JULY, A.D. 2004, AT 12:01 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID  
CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE  
AFORESAID CORPORATION.



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

3016691 8100H

AUTHENTICATION: 3467337

040808801

DATE: 11-09-04

**CERTIFICATE OF INCORPORATION  
OF  
BUL, INC.**

**ARTICLE I  
NAME**

The name of the Corporation is BUL, Inc.

**ARTICLE II  
REGISTERED OFFICE AND AGENT FOR SERVICE**

The address of the Corporation's registered office in the State of Delaware is in the county of New Castle, at 1013 Centre Road, Wilmington, Delaware 10805. The name of its registered agent at such address is Corporation Service Company.

**ARTICLE III  
CORPORATE PURPOSES**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

**ARTICLE IV  
CAPITAL STOCK**

**1. Shares, Classes and Series Authorized.**

The total number of shares of all classes of capital stock that the Corporation shall have authority to issue is 25,000,000 shares. Stockholders shall not have any preemptive rights, nor shall stockholders have the right to cumulative voting in the election of directors or for any other purpose. The classes and the aggregate number of shares of stock of each class that the Corporation shall have authority to issue are as follows:

- (a) 20,000,000 shares of Common Stock, \$0.0001 par value ("Common Stock").
- (b) 5,000,000 shares of Preferred Stock, \$0.0001 par value ("Preferred Stock").

**2. Powers and Rights of the Preferred Stock.**

The Preferred Stock may be issued from time to time in one or more series, with such distinctive serial designations as may be stated or expressed in the resolution or resolutions providing for the issue of such stock adopted from time to time by the Board of Directors; and in such resolution or resolutions providing for the issuance of shares of each particular series, the Board of Directors is also expressly authorized to fix: the right to vote, if any; the consideration

for which the shares of such series are to be issued; the number of shares constituting such series, which number may be increased (except as otherwise fixed by the Board of Directors) or decreased (but not below the number of shares thereof then outstanding) from time to time by action of the Board of Directors; the rate of dividends upon which and the times at which dividends on shares of such series shall be payable and the preference, if any, which such dividends shall have relative to dividends on shares of any other class or classes or any other series of stock of the Corporation; whether such dividends shall be cumulative or noncumulative, and if cumulative, the date or dates from which dividends on shares of such series shall be cumulative; the rights, if any, which the holders of shares of such series shall have in the event of any voluntary or involuntary liquidation, merger, consolidation, distribution or sale of assets, dissolution or winding up of the affairs of the Corporation; the rights, if any, which the holders of shares of such series shall have to convert such shares into or exchange such shares for shares of any other class or classes or any other series of stock of the Corporation or for any debt securities of the Corporation and the terms and conditions, including price and rate of exchange, of such conversion or exchange; whether shares of such series shall be subject to redemption, and the redemption price or prices and other terms of redemption, if any, for shares of such series including, without limitation, a redemption price or prices payable in shares of Common Stock; the terms and amounts of any sinking fund for the purchase or redemption of shares of such series; and any and all other designations, preferences, and relative, participating, optional or other special rights, qualifications, limitations or restrictions thereof pertaining to shares of such series' permitted by law.

### 3. Issuance of the Common Stock and the Preferred Stock.

The Board of Directors of the Corporation may from time to time authorize by resolution the issuance of any or all shares of the Common Stock and the Preferred Stock herein authorized in accordance with the terms and conditions set forth in this Certificate of Incorporation for such purposes, in such amounts, to such persons, corporations or entities, for such consideration, and in the case of the Preferred Stock, in one or more series, all as the Board of Directors in its discretion may determine and without any vote or other action by the stockholders, except as otherwise required by law. The capital stock, after the amount of the subscription price, or par value, has been paid in shall not be subject to assessment to pay the debts of the Corporation.

## ARTICLE V BOARD OF DIRECTORS

The governing board of the Corporation shall be known as directors, and the number of directors may from time to time be increased or decreased in such manner as shall be provided by the Bylaws of the Corporation, provided that the number of directors may not be less than one nor more than fifteen. Effective upon filing of this Certificate, the members of the board of directors, consisting of three persons, shall be as follows:

Rod Smith

66 E. Wadsworth Park Dr., Suite 101  
Draper, Utah 84020

**C. Douglas Smith**

**66 E. Wadsworth Park Dr., Suite 101  
Draper, Utah 84020**

**Daniel R. Ainge**

**66 E. Wadsworth Park Dr., Suite 101  
Draper, Utah 84020**

## **ARTICLE VI POWERS OF BOARD OF DIRECTORS**

The property and business of the Corporation shall be controlled and managed by or under the direction of its Board of Directors. In furtherance, and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized:

1. To make, alter, amend or repeal the Bylaws of the Corporation; provided, that no adoption, amendment, or repeal of the Bylaws shall invalidate any act of the board of directors that would have been valid prior to such adoption, amendment, or repeal;
2. To determine the rights, powers, duties, rules and procedures that affect the power of the board of directors to manage and direct the property, business, and affairs of the Corporation, including the power to designate and empower committees of the board of directors, to elect, appoint and empower the officers and other agents of the Corporation, and to determine the time and place of, and the notice requirements for board meetings, as well as the manner of taking board action; and
3. To exercise all such powers and do all such acts as may be exercised by the Corporation, subject to the provisions of the laws of the State of Delaware, this Certificate of Incorporation, and the Bylaws of the Corporation.

## **ARTICLE VII INDEMNIFICATION**

The Corporation shall indemnify and may advance expenses to its officers and directors to the fullest extent permitted by law in existence either now or hereafter.

## **ARTICLE VIII LIMITATION ON PERSONAL LIABILITY FOR DIRECTORS**

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of a fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended hereafter to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation

shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

Any repeal or modification of the foregoing paragraph by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

**ARTICLE IX  
CERTIFICATE SUBJECT TO AMENDMENT**

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute or by the Certificate of Incorporation, and except as otherwise provided by this Certificate of Incorporation, all rights conferred upon stockholders herein are granted subject to this reservation.

**ARTICLE X  
INCORPORATOR**

The sole incorporator of the Corporation is:

Rod Smith

66 E. Wadsworth Park Dr., Suite 101  
Draper, Utah 84020

IN WITNESS WHEREOF, the undersigned, acting as the sole incorporator of the Corporation, signs this Certificate of Incorporation as his act and deed this 11th day of March, 1999.

  
\_\_\_\_\_  
Rod Smith



**CERTIFICATE OF MERGER  
OF  
BUYERS UNITED INTERNATIONAL, INC. (A Utah Corporation)  
INTO  
BUI, INC. (A Delaware Corporation)  
Under Section 252 of the Delaware General Corporation Law**

The undersigned, an officer of BUI, INC., a Delaware corporation and the surviving corporation, does hereby certify that:

- FIRST:** The constituent corporations of the merger (the "Merger"), are BUI, INC., a Delaware corporation ("BUI"), and BUYERS UNITED INTERNATIONAL, INC., a Utah corporation ("Buyers United").
- SECOND:** BUI and Buyers United have each approved, adopted, certified, executed, and acknowledged a plan of merger (the "Plan of Merger"), with respect to the Merger in accordance with Section 252 of the General Corporation Law.
- THIRD:** The surviving corporation of the Merger will be BUI, and its name will be BUI, INC.
- FOURTH:** The certificate of incorporation of BUI as the surviving corporation shall be its certificate of incorporation as currently in effect.
- FIFTH:** The executed Plan of Merger is on file at the principal place of business of BUI, located at 66 E. Wadsworth Park Dr., Suite 101, Draper, Utah 84020.
- SIXTH:** Any stockholder of either BUI or Buyers United will be furnished with a copy of the Plan of Merger without cost upon request to BUI.
- SEVENTH:** The authorized capital stock of Buyers United is 100,000,000 shares of Common Stock, no par value.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Merger as of the 9th day of April, 1999, and affirms the contents hereof are true under the penalties of perjury.

Attest:

  
Paul Jarman, Secretary

BUI, INC.

By   
Rod Smith, President

**BUI, INC.**

**CERTIFICATE OF DESIGNATION OF NUMBER, POWERS, PREFERENCES  
AND RELATIVE, PARTICIPATING, OPTIONAL, AND OTHER SPECIAL  
RIGHTS, AND THE QUALIFICATIONS LIMITATIONS, RESTRICTIONS,  
AND OTHER DISTINGUISHING CHARACTERISTICS OF**

**SERIES A CONVERTIBLE PREFERRED STOCK**

Pursuant to Section 151(g) of the General Corporation Law of the State of Delaware

**BUI, INC.**, a corporation organized and existing under the laws of the state of Delaware (the "Corporation"), in accordance with Section 151(g) of the General Corporation Law of Delaware, **DOES HEREBY CERTIFY:**

1. The Certificate of Incorporation of the Corporation (the "Certificate of Incorporation"), fixes the total number of shares of all classes of capital stock which the Corporation shall have the authority to issue at Twenty-Five Million (25,000,000) shares, of which Five Million (5,000,000) shares shall be shares of Preferred Stock, par value \$0.0001 per share (herein referred to as "Preferred Stock"), and Twenty Million (20,000,000) shares shall be shares of Common Stock, par value \$0.0001 per share (herein referred to as "Common Stock").

2. The Certificate of Incorporation expressly grants to the Board of Directors of the Corporation authority to provide for the issuance of said Preferred Stock in one or more series, with such voting powers, if any, and with such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions providing for the issue thereof adopted by the Board of Directors and as are not stated and expressed in the Certificate of Incorporation.

3. Pursuant to authority conferred upon the Board of Directors by the Certificate of Incorporation, the Board of Directors, on May 14, 1999, by unanimous written consent, duly authorized and adopted the following resolutions providing for a series to be designated "Series A Convertible Preferred Stock";

**RESOLVED**, that issue of a series of Preferred Stock, \$0.0001 par value per share, of the Corporation consisting of 2,000,000 shares designated as "Series A Convertible Preferred Stock", is hereby provided for, and the voting power, designation, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of such series shall be as set forth below, and upon the effective date said series shall be deemed to be included in and be a part of the Certificate of Incorporation of the Corporation pursuant to the provisions of Sections 104 and 151 of the General Corporation Law of the State of Delaware:

## **SERIES A PREFERRED STOCK**

**Designation; Number of Shares.** The designation of such series of Preferred Stock shall be "Series A Convertible Preferred Stock" (hereinafter referred to as the "Series A Stock") and the number of authorized shares constituting the Series A Stock is Two Million (2,000,000). The Series A Stock shall be deemed a separate class of Preferred Stock, and shall be apart from any other series of Preferred Stock.

### **Part 1. Liquidation.**

Upon any liquidation, dissolution, or winding up of the Corporation, the holders of Series A Stock will be entitled to be paid before any distribution or payment is made upon Junior Securities (as defined below), an amount in cash equal to the aggregate Liquidation Value (as defined below) of all shares of Series A Stock outstanding, and the holders of Series A Stock will not be entitled to any further payment. If upon any such liquidation, dissolution, or winding up of the Corporation, the Corporation's assets to be distributed among the holders of Series A Stock are insufficient to permit payment to such holders of the aggregate amount which they are entitled to be paid, then the entire assets to be distributed will be distributed ratably among such holders based upon the aggregate Liquidation Value of the Series A Stock held by each such holder. The Corporation will mail written notice of such liquidation, dissolution, or winding up not less than 30 days prior to the payment date stated therein, to each record holder of Series A Stock. Neither the consolidation or merger of the Corporation into or with any other corporation or corporations, nor the sale or transfer by the Corporation of all or any part of its assets, nor the reduction of the capital stock of the Corporation, will be deemed to be liquidation, dissolution, or winding up of the Corporation within the meaning of this Part 1.

### **Part 2. Dividends.**

**2A. Entitlement.** The holders of Series A Stock shall be entitled to receive cumulative dividends when and as declared by the Corporation's Board of Directors out of funds available therefor under applicable law. Such dividends shall be paid to the holders of record at the close of business on the date specified by the Board of Directors at the time such dividend is declared; provided, however, that such date shall not be more than sixty (60) days nor less than ten (10) days prior to each respective Dividend Payment Date (as defined below under this Part 2).

**2B. Accrual Rate.** Dividends on each share of Series A Stock shall accrue cumulatively on a daily basis at the rate of 8.00% per annum of the Liquidation Value thereof, but not including such portion of the Liquidation Value, if any, which constitutes accrued and unpaid dividends, from and including the date of issuance of such share to and including the date on which the Redemption Price (as defined below) of such share is paid or the date on which such share is converted into Common Stock. Such dividends shall accrue whether or not they have been declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. The date on which the Corporation initially issues any share of the Series A Stock will be deemed to be its "date of issuance" regardless of the number of times transfer of any such share is made on the stock records maintained by or for

the Corporation and regardless of the number of certificates which may be issued to evidence any such share.

**2C. Dividend Payment Dates.** Dividends on the Series A Stock shall be payable semi-annually on June 30 and December 31 of each year (the "Dividend Payment Dates"); provided, that the first Dividend Payment Date shall be December 31, 1999. All dividends which have accrued on each share of Series A Stock outstanding during the period ending upon each such Dividend Payment Date will be added to the Liquidation Value of such share and will remain a part thereof until such dividends are paid.

**2D. Manner of Payment.** Dividends on the Series A Stock shall be paid to the holders in cash or in-kind through the issuance of Common Stock, as determined at the election of the Corporation within sixty (60) days following each Dividend Payment Date. If paid in-kind with Common Stock, the number of shares issued to each holder shall be equal to the dollar amount of the dividend divided by the average Market Price (as defined below) per share of Common Stock over the five (5) trading days immediately preceding the date on which the dividend is declared, rounded up to the nearest whole share.

**2E. Certain Restrictions.** The Corporation shall not, without the prior written consent of the holders of a majority of Series A Stock, (i) declare, order or pay any dividend (other than dividends payable solely in shares of stock) on any Junior Securities or (ii) redeem any shares of Junior Securities, unless and until the Corporation shall have redeemed all of the outstanding Series A Stock or all shares of Series A Stock are converted to Common Stock.

**2F. Distribution of Partial Dividend Payments; Fractional Shares.** If at any time the Corporation pays less than the total amount of dividends then accrued with respect to the Series A Stock, such payment will be distributed ratably among the holders of such Series A Stock based upon the aggregate accrued but unpaid dividends on such Series A Stock held by each holder. Each fractional share of Series A Stock outstanding, if any, shall be entitled to a ratably proportionate amount of all dividends to which each outstanding full share of such Series A Stock is entitled hereunder.

### **Part 3. Conversion Rights.**

**3A. Holder Conversion Procedure.** Subject to the provisions set forth below, each share of Series A Stock shall be convertible at the option of the holder thereof, in the manner hereinafter set forth, into that number of fully paid and non-assessable shares of Common Stock determined as set forth below. Any holder of Series A Stock desiring to convert such shares into shares of Common Stock shall surrender the certificate or certificates for the shares being converted, duly endorsed or assigned to the Corporation or in blank, at the principal office of the Corporation or at the bank or trust company appointed by the Corporation for that purpose, accompanied by a written notice of conversion specifying the number of shares of Series A Stock to be converted and the name or names in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. After the receipt of such notice of conversion and the certificates for the Series A Stock converted, the Corporation shall promptly issue and deliver or

cause to be issued and delivered to such holder a certificate or certificates for shares of Common Stock resulting from such conversion. In case less than all of the shares of Series A Stock represented by a certificate are to be converted by a holder, upon such conversion the Corporation shall also deliver or cause to be delivered to such holder a certificate or certificates for the shares of Series A Stock not so converted. The Corporation shall pay all transfer agent fees and expenses payable upon the conversion of Series A Stock.

3B. **Company Conversion Procedure.** Subject to the provisions set forth below, each share of Series A Stock shall be convertible at the option of the Company, in the manner hereinafter set forth, into that number of fully paid and non-assessable shares of Common Stock determined as set forth below. The Company must convert all Series A Stock if it converts any Series A Stock. The Company may elect to convert the Series A Stock to Common Stock by resolution of the Board of Directors ("Conversion Resolution") duly adopted at a meeting of Directors or by unanimous written consent of the Directors, if as of the close of business on the Business Day immediately preceding adoption of such resolution the Company Conversion Conditions (as defined below) have been met. Written notice of conversion shall be sent not less than five Business Days following the day on which the Conversion Resolution is adopted to all holders of record of the Series A Stock at their addresses appearing on the books and records of the Corporation specifying the date of conversion, which shall not be less than 20 calendar days following the date such notice is given. Promptly after the date of conversion set forth in the notice, each holder of the Series A Stock shall surrender the certificate or certificates for the shares to the Corporation at the principal office of the Corporation or at the bank or trust company appointed by the Corporation for that purpose. After the receipt of the certificates for the Series A Stock converted, the Corporation shall promptly issue and deliver or cause to be issued and delivered to such holder a certificate or certificates for shares of Common Stock resulting from such conversion. The Corporation shall pay all transfer agent fees and expenses payable upon the conversion of Series A Stock.

3C. **Conversion Rate.** Each share of Series A Stock shall be convertible into the number of fully paid and nonassessable shares of Common Stock which results from dividing the "Conversion Price" in effect at the time of conversion into the "Conversion Value". The initial Conversion Price per share of Series A Stock shall be \$2.00. The Conversion Value per share of Series A Stock shall be \$2.00. The initial Conversion Price shall be subject to adjustment as set forth in paragraph 3D.

3D. **Conversion Price Adjustments of Preferred Stock.** The Conversion Price of the Series A Stock shall be subject to adjustment from time to time as set forth below.

(1) **Adjustment Provisions.** If the Corporation shall issue, after the date upon which any shares of Series A Stock were first issued (the "Purchase Date"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to the issuance of such Additional Stock, the Conversion Price in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be reduced to the price per share at which the Corporation issued or sold, or is deemed to have issued or sold, such shares of Common Stock. Except to the limited extent provided for in

subparagraphs 3D(1)(c)(iii) and (iv), no adjustment of the Conversion Price pursuant to this subparagraph 3D(1) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(a) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(b) In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors.

(c) In the case of the issuance of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this subparagraph 3D(1)(c) and subparagraph 3D(1)(d):

(i) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subparagraphs 3D(1)(a) and (b)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(ii) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof, shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subparagraphs 3D(1)(a) and (b)).

(iii) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options



or rights or upon conversion of or in exchange for such convertible or exchangeable securities, (excluding a change resulting solely from the antidilution provisions thereof if such change results from an event which gives rise to an antidilution adjustment under this paragraph 3D), the Conversion Price, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(iv) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(v) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to subparagraphs 3D(1)(c)(i) and (ii) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subparagraphs 3D(1)(c)(iii) and (iv).

(d) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subparagraphs 3D(1)(c)) by the Corporation after the Purchase Date other than

(i) Common Stock issued pursuant to a transaction described in subparagraphs 3D(1)(e) hereof;

(ii) shares of Common Stock issuable or issued pursuant to a stock option, warrant, conversion right, or purchase right outstanding as of the Purchase Date; or

(iii) Common Stock issued or issuable upon conversion of the Series A Stock.

(e) In the event the Corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of the Series A

Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of the Series A Stock shall be increased in proportion to such increase in the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

(f) If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for the Series A Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of the Series A Stock shall be decreased in proportion to such decrease in outstanding shares.

(2) Other Distributions. In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in subparagraph 3D(1), then, in each such case for the purpose of this subparagraph 3D(2), the holders of the Series A Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series A Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(3) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this paragraph 3D) provision shall be made so that the holders of the Series A Stock shall thereafter be entitled to receive upon conversion of the Series A Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this paragraph 3D with respect to the rights of the holders of the Series A Stock after the recapitalization to the end that the provisions of this paragraph 3D (including adjustment of the Conversion Price then in effect and the number of shares issuable upon conversion of the Series A Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(4) Dividend Payment Adjustment. In the event the Corporation fails to pay any dividend within sixty (60) days following the applicable Dividend Payment Date, the Conversion Price then in effect shall be reduced by subtracting from it the "Default Amount." The initial Default Amount shall be \$0.25, and the Default Amount will be decreased or increased in the same manner as adjustment of the Conversion Price described in subparagraphs 3D(1)(e) and (f).

(5) No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this



paragraph 3D and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A Stock against impairment.

(6) No Fractional Shares and Certificate as to Adjustments. No fractional shares shall be issued upon the conversion of any share or shares of the Series A Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(7) Notice of Adjustment. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this paragraph 3D, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Stock, furnish or cause to be furnished to such holder a like certificate setting forth (a) such adjustment and readjustment, (b) the Conversion Price at the time in effect, and (c) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of Series A Stock.

(8) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series A Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(9) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Stock, in addition to such other remedies as shall be available to the holder of the Series A Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to these provisions.

(10) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series A Stock shall be deemed given if deposited in the United States mail,

postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

3E. **Effect of Conversion.** As of the date the Corporation receives notice of conversion from the holder of the Series A Stock under paragraph 3A, above, or the third calendar day following the day on which notice of conversion by the Company to the holders of Series A Stock under paragraph 3B is deposited in the U.S. Mail with first class postage prepaid (a "Conversion Date"), all rights pertaining to the Series A Stock will cease, and such Series A Stock will not be deemed to be outstanding. All certificates representing the Series A Stock subject to conversion will represent only the right to receive Common Stock of the Corporation under this Part 3 and payment of all accrued and unpaid dividends as of the Conversion Date.

3F. **Converted Shares.** Any shares of Series A Stock which at any time have been converted shall be canceled, may not be reissued as Series A Stock, and shall be returned to the status of authorized and unissued shares of Preferred Stock without designation as to series.

#### Part 4. Voting Rights.

The Series A Stock shall have no voting rights, except as required in the specific instance by the General Corporation Law of Delaware and except the right to approve by majority vote of the holders of the Series A Stock: the authorization and issuance of any class or series of Preferred Stock senior to the Series A Stock; any amendment, modification, or repeal of the Certificate of Incorporation of the Corporation if the powers, preferences, or special rights of the Series A Stock would be adversely affected; and, the imposition of any restriction on the Series A Stock, other than restrictions arising under the General Corporation Law of Delaware or the resolution of the Board of Directors approving the Series A Stock.

#### Part 5. Redemption.

5A. **Redemption Price.** For each share of Series A Stock which is to be redeemed, the Corporation will be obligated on the Redemption Date (as defined below) to pay to the holder thereof (upon surrender by such holder at the Corporation's principal office or to the Corporation's transfer agent of the certificates representing such shares of Series A Stock) an amount in immediately available funds equal to the Liquidation Value plus all accrued dividends as of the Redemption Date.

5B. **Notice of Redemption.** The Corporation will mail written notice of each redemption of Series A Stock to each record holder of Series A Stock not more than sixty (60) nor less than thirty (30) days prior to the date on which such redemption is to be made. The date specified in such notice for redemption is herein referred to as the "Redemption Date."

5C. **Termination of Rights.** On the Redemption Date all rights pertaining to the Series A Stock, including, but not limited to, any right of conversion, will cease, and such Series A Stock will not be deemed to be outstanding. All certificates representing the Series A Stock

subject to redemption will represent only the right to receive payment in accordance with the provisions of this Part 5.

5D. **Redeemed or Otherwise Acquire Shares.** Any shares of Series A Stock which are redeemed or otherwise acquired by the Corporation shall be canceled, may not be reissued as Series A Stock, and shall be returned to the status of authorized and unissued shares of Preferred Stock without designation as to series.

5E. **Optional Redemption.** The Corporation may, at any time on or after January 1, 2005, redeem all or any portion of the Series A Stock.

#### **Part 6. Definitions.**

"Business Day" shall mean a day other than a Saturday, Sunday or other day on which commercial banks in Salt Lake City, Utah are authorized by law to close.

"Common Stock" means the Common Stock, \$0.0001 par value per share, of the Corporation and any capital stock of any class of the Corporation hereafter authorized which is not limited to a fixed sum or percentage of par or stated value in respect to the rights of the holders thereof to participate in dividends or in the distribution of assets upon any liquidation, dissolution, or winding up of the Corporation.

"Conversion Conditions" consist of the following conditions:

(i) The shares of Common Stock issuable on conversion of the Series A Stock are registered for resale under the Securities Act of 1933, or are eligible for sale under Rule 144(k) promulgated under the Securities Act of 1933; and

(ii) The Market Price for the Common Stock during a period of thirty (30) consecutive trading days is not less than \$4.00 per share.

"Junior Securities" means any of the Corporation's equity securities other than the Series A Stock.

"Liquidation Value" of any Series A Stock as of any particular date will be equal to \$2.00 per share.

"Market Price" of the Common Stock on any relevant date shall be determined as follows:

(i) If the Common Stock is not at the time listed or admitted to trading on any national securities exchange but is traded on the Nasdaq National Market, the Market Price shall be the mean between the highest closing "bid" quotation of a share of Common Stock on such date as reported by the Nasdaq National Market or any successor system.

(ii) If the Common Stock is at the time listed or admitted to trading on any national securities exchange, then the Market Price shall be the closing selling price per share on the date in question on the securities exchange, as such price is officially quoted in the composite tape of transactions on such exchange. If there is no reported sale of Common Stock on such exchange on the date in question, then the Market Price for that date shall be the closing selling price on the exchange on the last preceding date for which such quotation exists.

(iii) If the Common Stock is not listed on such date on any national securities exchange nor included in the Nasdaq National Market, but is traded in the over-the-counter market, the highest closing "bid" quotation of a share of Common Stock on such date as reported on the Nasdaq Smallcap Market or the NASD OTC Bulletin Board, as applicable.

"Person" means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

\* \* \*

IN WITNESS WHEREOF, the Corporation has caused this certificate to be executed by Rod Smith, its President, and attested to by Paul Jarman, its Secretary, this 23rd day of June, 1999.

BUI, INC.

By

  
Rod Smith, President

ATTEST

By

  
Paul Jarman, Secretary

**CERTIFICATE OF AMENDMENT OF  
CERTIFICATE OF INCORPORATION OF  
BUI, INC.  
(Changing its name to "BuyersOnline.com, Inc.")**

BUI, INC., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

The amendment to the Corporation's Certificate of Incorporation set forth below was duly adopted by resolutions approved by the Corporation's Board of Directors and stockholders in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware:

**Amendment.** The Certificate of Incorporation of the corporation is amended by striking Article I in its entirety and replacing therefor:

**ARTICLE I  
NAME**

The name of the Corporation is BuyersOnline.com, Inc.

**IN WITNESS WHEREOF**, BUI, Inc. has caused this Certificate to be signed by its duly authorized officer this 30th day of March, 2000.

BUI, Inc.

By: 

Rod Smith, President

**BUYERSONLINE.COM, INC.**

**CERTIFICATE OF DESIGNATION OF NUMBER, POWERS, PREFERENCES  
AND RELATIVE, PARTICIPATING, OPTIONAL, AND OTHER SPECIAL  
RIGHTS, AND THE QUALIFICATIONS LIMITATIONS, RESTRICTIONS,  
AND OTHER DISTINGUISHING CHARACTERISTICS OF**

**SERIES B CONVERTIBLE PREFERRED STOCK**

Pursuant to Section 151(g) of the General Corporation Law of the State of Delaware

**BUYERSONLINE.COM, INC.**, a corporation organized and existing under the laws of the state of Delaware (the "Corporation"), in accordance with Section 151(g) of the General Corporation Law of Delaware, **DOES HEREBY CERTIFY:**

1. The Certificate of Incorporation of the Corporation (the "Certificate of Incorporation"), fixes the total number of shares of all classes of capital stock which the Corporation shall have the authority to issue at Twenty-Five Million (25,000,000) shares, of which Five Million (5,000,000) shares shall be shares of Preferred Stock, par value \$0.0001 per share (herein referred to as "Preferred Stock"), and Twenty Million (20,000,000) shares shall be shares of Common Stock, par value \$0.0001 per share (herein referred to as "Common Stock").

2. The Certificate of Incorporation expressly grants to the Board of Directors of the Corporation authority to provide for the issuance of said Preferred Stock in one or more series, with such voting powers, if any, and with such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions providing for the issue thereof adopted by the Board of Directors and as are not stated and expressed in the Certificate of Incorporation.

3. Pursuant to authority conferred upon the Board of Directors by the Certificate of Incorporation, the Board of Directors by resolution duly adopted at a meeting held on August 30, 2000, duly authorized and adopted the following resolutions providing for a series to be designated "Series B Convertible Preferred Stock";

RESOLVED, that issue of a series of Preferred Stock, \$0.0001 par value per share, of the Corporation consisting of 1,234,500 shares designated as "Series B Convertible Preferred Stock", is hereby provided for, and the voting power, designation, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of such series shall be as set forth below, and upon the effective date said series shall be deemed to be included in and be a part of the Certificate of Incorporation of the Corporation pursuant to the provisions of Sections 104 and 151 of the General Corporation Law of the State of Delaware:

**SERIES B CONVERTIBLE PREFERRED STOCK**

Designation; Number of Shares. The designation of such series of Preferred Stock shall be "Series B Convertible Preferred Stock" (hereinafter referred to as the "Series B Stock") and the number of authorized shares constituting the Series B Stock is One Million Two Hundred Thirty-Four Thousand Five Hundred (1,234,500). The Series B Stock shall be deemed a separate series of Preferred Stock, and shall be apart from any other series of Preferred Stock.

## **Part 1. Liquidation.**

Upon any liquidation, dissolution, or winding up of the Corporation, the holders of Series B Stock will be entitled to be paid before any distribution or payment is made upon Junior Securities (as defined below) and after any distribution or payment is made upon Senior Securities (as defined below) an amount in cash equal to the aggregate Liquidation Value (as defined below) of all shares of Series B Stock outstanding, and the holders of Series B Stock will not be entitled to any further payment. If upon any such liquidation, dissolution, or winding up of the Corporation, the Corporation's assets to be distributed among the holders of Series B Stock are insufficient to permit payment to such holders of the aggregate amount which they are entitled to be paid, then the entire assets to be distributed will be distributed ratably among such holders based upon the aggregate Liquidation Value of the Series B Stock held by each such holder. The Corporation will mail written notice of such liquidation, dissolution, or winding up not less than 30 days prior to the payment date stated therein, to each record holder of Series B Stock. Neither the consolidation or merger of the Corporation into or with any other corporation or corporations, nor the sale or transfer by the Corporation of all or any part of its assets, nor the reduction of the capital stock of the Corporation, will be deemed to be liquidation, dissolution, or winding up of the Corporation within the meaning of this Part 1.

## **Part 2. Dividends.**

2A. **Entitlement.** The holders of Series B Stock shall be entitled to receive cumulative dividends when and as declared by the Corporation's Board of Directors out of funds available therefor under applicable law. Such dividends shall be paid to the holders of record at the close of business on the date specified by the Board of Directors at the time such dividend is declared; provided, however, that such date shall not be more than sixty (60) days nor less than ten (10) days prior to each respective Dividend Payment Date (as defined below under this Part 2).

2B. **Accrual Rate.** Dividends on each share of Series B Stock shall accrue cumulatively on a daily basis at the rate of 8.00% per annum of the Liquidation Value thereof, but not including such portion of the Liquidation Value, if any, which constitutes accrued and unpaid dividends, from and including the date of issuance of such share to and including the date on which the Redemption Price (as defined below) of such share is paid or the date on which such share is converted into Common Stock. Such dividends shall accrue whether or not they have been declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. The date on which the Corporation initially issues any share of the Series B Stock will be deemed to be its "date of issuance" regardless of the number of times transfer of any such share is made on the stock records maintained by or for the Corporation and regardless of the number of certificates which may be issued to evidence any such share.

2C. **Dividend Payment Dates.** Dividends on the Series B Stock shall be payable semi-annually on June 30 and December 31 of each year (the "Dividend Payment Dates"); provided, that the first Dividend Payment Date shall be December 31, 2000. All dividends which have accrued on each share of Series B Stock outstanding during the period ending upon each such Dividend Payment Date will be added to the Liquidation Value of such share and will remain a part thereof until such dividends are paid.

2D. **Manner of Payment.** Dividends on the Series B Stock shall be paid to the holders in cash or in-kind through the issuance of Common Stock, as determined at the election of the Corporation within sixty (60) days following each Dividend Payment Date. If paid in-kind with Common Stock, the number of shares issued to each holder shall be equal to the dollar amount of the dividend divided by the average

Market Price (as defined below) per share of Common Stock over the five (5) trading days immediately preceding the date on which the dividend is declared, rounded up to the nearest whole share.

2E. **Certain Restrictions.** The Corporation shall not, without the prior written consent of the holders of a majority of Series B Stock, (i) declare, order or pay any dividend (other than dividends payable solely in shares of stock) on any Junior Securities or (ii) redeem any shares of Junior Securities, unless and until the Corporation shall have redeemed all of the outstanding Series B Stock or all shares of Series B Stock are converted to Common Stock.

2F. **Distribution of Partial Dividend Payments; Fractional Shares.** If at any time the Corporation pays less than the total amount of dividends then accrued with respect to the Series B Stock, such payment will be distributed ratably among the holders of such Series B Stock based upon the aggregate accrued but unpaid dividends on such Series B Stock held by each holder. Each fractional share of Series B Stock outstanding, if any, shall be entitled to a ratably proportionate amount of all dividends to which each outstanding full share of such Series B Stock is entitled hereunder.

### Part 3. Conversion Rights.

3A. **Holder Conversion Procedure.** Subject to the provisions set forth below, each share of Series B Stock shall be convertible at the option of the holder thereof, in the manner hereinafter set forth, into that number of fully paid and non-assessable shares of Common Stock determined as set forth below. Any holder of Series B Stock desiring to convert such shares into shares of Common Stock shall surrender the certificate or certificates for the shares being converted, duly endorsed or assigned to the Corporation or in blank, at the principal office of the Corporation or at the bank or trust company appointed by the Corporation for that purpose, accompanied by a written notice of conversion specifying the number of shares of Series B Stock to be converted and the name or names in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. After the receipt of such notice of conversion and the certificates for the Series B Stock converted, the Corporation shall promptly issue and deliver or cause to be issued and delivered to such holder a certificate or certificates for shares of Common Stock resulting from such conversion. In case less than all of the shares of Series B Stock represented by a certificate are to be converted by a holder, upon such conversion the Corporation shall also deliver or cause to be delivered to such holder a certificate or certificates for the shares of Series B Stock not so converted. The Corporation shall pay all transfer agent fees and expenses payable upon the conversion of Series B Stock.

3B. **Company Conversion Procedure.** Subject to the provisions set forth below, each share of Series B Stock shall be convertible at the option of the Company, in the manner hereinafter set forth, into that number of fully paid and non-assessable shares of Common Stock determined as set forth below. The Company must convert all Series B Stock if it converts any Series B Stock. The Company may elect to convert the Series B Stock to Common Stock by resolution of the Board of Directors ("Conversion Resolution") duly adopted at a meeting of Directors or by unanimous written consent of the Directors, if as of the close of business on the Business Day immediately preceding adoption of such resolution the Company Conversion Conditions (as defined below) have been met. Written notice of conversion shall be sent not less than five Business Days following the day on which the Conversion Resolution is adopted to all holders of record of the Series B Stock at their addresses appearing on the books and records of the Corporation specifying the date of conversion, which shall not be less than 20 calendar days following the date such notice is given. Promptly after the date of conversion set forth in the notice, each holder of the Series B Stock shall surrender the certificate or certificates for the shares to the Corporation at the principal office of the Corporation or at the bank or trust company appointed by the Corporation for that purpose. After the receipt of the certificates for the Series B Stock converted, the Corporation shall promptly issue and deliver or cause to be issued and delivered to such holder a certificate or certificates



for shares of Common Stock resulting from such conversion. The Corporation shall pay all transfer agent fees and expenses payable upon the conversion of Series B Stock.

3C. **Conversion Rate.** Each share of Series B Stock shall be convertible into the number of fully paid and nonassessable shares of Common Stock which results from dividing the "Conversion Price" in effect at the time of conversion into the "Conversion Value". The initial Conversion Price per share of Series B Stock shall be \$2.00. The Conversion Value per share of Series B Stock shall be \$10.00. The initial Conversion Price shall be subject to adjustment as set forth in paragraph 3D.

3D. **Conversion Price Adjustments of Preferred Stock.** The Conversion Price of the Series B Stock shall be subject to adjustment from time to time as set forth below.

(1) **Adjustment Provisions.** If the Corporation shall issue, after the date upon which any shares of Series B Stock were first issued (the "Purchase Date"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to the issuance of such Additional Stock, the Conversion Price in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be reduced to the price per share at which the Corporation issued or sold, or is deemed to have issued or sold, such shares of Common Stock. Except to the limited extent provided for in subparagraphs 3D(1)(c)(iii) and (iv), no adjustment of the Conversion Price pursuant to this subparagraph 3D(1) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(a) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(b) In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors.

(c) In the case of the issuance of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this subparagraph 3D(1)(c) and subparagraph 3D(1)(d):

(i) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subparagraphs 3D(1)(a) and (b)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(ii) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof, shall be deemed to have been issued at the time such securities were issued or such

options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subparagraphs 3D(1)(a) and (b)).

(iii) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, (excluding a change resulting solely from the antidilution provisions thereof if such change results from an event which gives rise to an antidilution adjustment under this paragraph 3D), the Conversion Price, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(iv) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(v) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to subparagraphs 3D(1)(c)(i) and (ii) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subparagraphs 3D(1)(c)(iii) and (iv).

(d) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subparagraphs 3D(1)(c)) by the Corporation after the Purchase Date other than

(i) Common Stock issued pursuant to a transaction described in subparagraphs 3D(1)(c) hereof;

(ii) shares of Common Stock issuable or issued pursuant to a stock option, warrant, conversion right, or purchase right outstanding as of the Purchase Date; or

(iii) Common Stock issued or issuable upon conversion or in payment of dividends on the Corporation's Series A Convertible Preferred Stock as constituted on August 30, 2000, or on the Series B Stock.

(e) In the event the Corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of the Series B

Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of the Series B Stock shall be increased in proportion to such increase in the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

(f) If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for the Series B Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of the Series B Stock shall be decreased in proportion to such decrease in outstanding shares.

(2) Other Distributions. In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in subparagraph 3D(1), then, in each such case for the purpose of this subparagraph 3D(2), the holders of the Series B Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series B Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(3) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this paragraph 3D) provision shall be made so that the holders of the Series B Stock shall thereafter be entitled to receive upon conversion of the Series B Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this paragraph 3D with respect to the rights of the holders of the Series B Stock after the recapitalization to the end that the provisions of this paragraph 3D (including adjustment of the Conversion Price then in effect and the number of shares issuable upon conversion of the Series B Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(4) Dividend Payment Adjustment. In the event the Corporation fails to pay any dividend within sixty (60) days following the applicable Dividend Payment Date, the Conversion Price then in effect shall be reduced by subtracting from it the "Default Amount." The initial Default Amount shall be \$0.25, and the Default Amount will be decreased or increased in the same manner as adjustment of the Conversion Price described in subparagraphs 3D(1)(e) and (f).

(5) No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this paragraph 3D and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series B Stock against impairment.

(6) No Fractional Shares and Certificate as to Adjustments. No fractional shares shall be issued upon the conversion of any share or shares of the Series B Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series B Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(7) Notice of Adjustment. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this paragraph 3D, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series B Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series B Stock, furnish or cause to be furnished to such holder a like certificate setting forth (a) such adjustment and readjustment, (b) the Conversion Price at the time in effect, and (c) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of Series B Stock.

(8) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series B Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(9) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series B Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series B Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series B Stock, in addition to such other remedies as shall be available to the holder of the Series B Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to these provisions.

(10) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series B Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

3E. Effect of Conversion. As of the date the Corporation receives notice of conversion from the holder of the Series B Stock under paragraph 3A, above, or the third calendar day following the day on which notice of conversion by the Company to the holders of Series B Stock under paragraph 3B is deposited in the U.S. Mail with first class postage prepaid (a "Conversion Date"), all rights pertaining to the Series B Stock will cease, and such Series B Stock will not be deemed to be outstanding. All certificates representing the Series B Stock subject to conversion will represent only the right to receive Common Stock of the Corporation under this Part 3 and payment of all accrued and unpaid dividends as of the Conversion Date.

3F. Converted Shares. Any shares of Series B Stock which at any time have been converted shall be canceled, may not be reissued as Series B Stock, and shall be returned to the status of authorized and unissued shares of Preferred Stock without designation as to series.

#### Part 4. Voting Rights.

The Series B Stock shall have no voting rights, except as required in the specific instance by the General Corporation Law of Delaware and except the right to approve by majority vote of the holders of the Series B Stock: the authorization and issuance of any class or series of Preferred Stock senior to the

Series B Stock; any amendment, modification, or repeal of the Certificate of Incorporation of the Corporation if the powers, preferences, or special rights of the Series B Stock would be adversely affected; and, the imposition of any restriction on the Series B Stock, other than restrictions arising under the General Corporation Law of Delaware or the resolution of the Board of Directors approving the Series B Stock.

#### Part 5. Redemption.

5A. **Redemption Price.** For each share of Series B Stock which is to be redeemed, the Corporation will be obligated on the Redemption Date (as defined below) to pay to the holder thereof (upon surrender by such holder at the Corporation's principal office or to the Corporation's transfer agent of the certificates representing such shares of Series B Stock) an amount in immediately available funds equal to the Liquidation Value plus all accrued dividends as of the Redemption Date.

5B. **Notice of Redemption.** The Corporation will mail written notice of each redemption of Series B Stock to each record holder of Series B Stock not more than sixty (60) nor less than thirty (30) days prior to the date on which such redemption is to be made. The date specified in such notice for redemption is herein referred to as the "Redemption Date."

5C. **Termination of Rights.** On the Redemption Date all rights pertaining to the Series B Stock, including, but not limited to, any right of conversion, will cease, and such Series B Stock will not be deemed to be outstanding. All certificates representing the Series B Stock subject to redemption will represent only the right to receive payment in accordance with the provisions of this Part 5.

5D. **Redeemed or Otherwise Acquire Shares.** Any shares of Series B Stock which are redeemed or otherwise acquired by the Corporation shall be canceled, may not be reissued as Series B Stock, and shall be returned to the status of authorized and unissued shares of Preferred Stock without designation as to series.

5E. **Optional Redemption.** The Corporation may, at any time on or after January 1, 2005, redeem all or any portion of the Series B Stock.

#### Part 6. Definitions.

"Business Day" shall mean a day other than a Saturday, Sunday or other day on which commercial banks in Salt Lake City, Utah are authorized by law to close.

"Common Stock" means the Common Stock, \$0.0001 par value per share, of the Corporation and any capital stock of any class of the Corporation hereafter authorized which is not limited to a fixed sum or percentage of par or stated value in respect to the rights of the holders thereof to participate in dividends or in the distribution of assets upon any liquidation, dissolution, or winding up of the Corporation.

"Conversion Conditions" consist of the following conditions:

(i) The shares of Common Stock issuable on conversion of the Series B Stock are registered for resale under the Securities Act of 1933, or are eligible for sale under Rule 144(k) promulgated under the Securities Act of 1933; and

(ii) The Market Price for the Common Stock during a period of thirty (30) consecutive trading days is not less than \$4.00 per share.

"Junior Securities" means any of the Corporation's equity securities other than the Series B Stock and the Corporation's Series A Convertible Preferred Stock as constituted on August 30, 2000.

"Liquidation Value" of any Series B Stock as of any particular date will be equal to \$10.00 per share.

"Market Price" of the Common Stock on any relevant date shall be determined as follows:

(i) If the Common Stock is not at the time listed or admitted to trading on any national securities exchange but is traded on the Nasdaq Stock Market, the Market Price shall be the mean between the highest closing "bid" quotation of a share of Common Stock on such date as reported by the Nasdaq National Market or any successor system.

(ii) If the Common Stock is at the time listed or admitted to trading on any national securities exchange, then the Market Price shall be the closing selling price per share on the date in question on the securities exchange, as such price is officially quoted in the composite tape of transactions on such exchange. If there is no reported sale of Common Stock on such exchange on the date in question, then the Market Price for that date shall be the closing selling price on the exchange on the last preceding date for which such quotation exists.

(iii) If the Common Stock is not listed on such date on any national securities exchange nor included in the Nasdaq Stock Market, but is traded in the over-the-counter market, the highest closing "bid" quotation of a share of Common Stock on such date as reported on the NASD OTC Bulletin Board.

"Person" means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Senior Securities" means the Corporation's Series A Convertible Preferred Stock as constituted on August 30, 2000.

\* \* \*

IN WITNESS WHEREOF, the Corporation has caused this certificate to be executed by G. Douglas Smith, its Vice President, and attested to by Paul Jarman, its Secretary, this 21st day of September, 2000.

BUYERSONLINE.COM, INC.

By G. Douglas Smith  
G. Douglas Smith, Vice President

ATTEST

By Paul Jarman  
Paul Jarman, Secretary

**CERTIFICATE OF AMENDMENT OF  
CERTIFICATE OF INCORPORATION OF  
BUYERSONLINE.COM, INC.**

BuyersOnline.com, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

The amendment to the Corporation's Certificate of Incorporation set forth below was duly adopted by resolutions approved by the Corporation's Board of Directors and stockholders in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware:

**Amendment.** The Certificate of Incorporation of the corporation is amended by striking Section 1 of Article IV in its entirety and replacing therefor:

1. Shares, Classes and Series Authorized.

The total number of shares of all classes of capital stock that the Corporation shall have authority to issue is 105,000,000 shares. Stockholders shall not have any preemptive rights, nor shall stockholders have the right to cumulative voting in the election of directors or for any other purpose. The classes and the aggregate number of shares of stock of each class that the Corporation shall have authority to issue are as follows:

(a) 100,000,000 shares of Common Stock, \$0.0001 par value ("Common Stock").

(b) 5,000,000 shares of Preferred Stock, \$0.0001 par value ("Preferred Stock").

IN WITNESS WHEREOF, BuyersOnline.com, Inc., has caused this Certificate to be signed by its duly authorized officer this 24 day of October, 2000.

BUYERSONLINE.COM, INC.

By: \_\_\_\_\_

  
Paul Jarman, Vice President

**CERTIFICATE OF AMENDMENT OF  
CERTIFICATE OF INCORPORATION OF  
BUYERSONLINE.COM, INC.**

BuyersOnline.com, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

The amendment to the Corporation's Certificate of Incorporation set forth below was duly adopted by resolutions approved by the Corporation's Board of Directors and stockholders in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware. The amendments will be effective as of 12:01 am Eastern Time on November 20, 2001.

**Amendment No. 1.** The Certificate of Incorporation of the corporation is amended by striking Article I in its entirety and replacing there for:

**ARTICLE I  
NAME**

The name of the Corporation is Buyers United, Inc.

**Amendment No. 2.** The Certificate of Incorporation of the corporation is amended by striking Section 1 of Article IV in its entirety and replacing there for:

**1. Shares, Classes and Series Authorized.**

The total number of shares of all classes of capital stock that the Corporation shall have authority to issue is 115,000,000 shares. Stockholders shall not have any preemptive rights, nor shall stockholders have the right to cumulative voting in the election of directors or for any other purpose. The classes and the aggregate number of shares of stock of each class that the Corporation shall have authority to issue are as follows:

(a) 100,000,000 shares of Common Stock, \$0.0001 par value ("Common Stock").

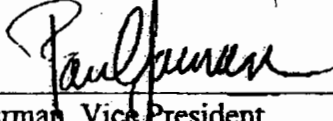
(b) 15,000,000 shares of Preferred Stock, \$0.0001 par value ("Preferred Stock").



**IN WITNESS WHEREOF**, BuyersOnline.com, Inc., has caused this Certificate to be signed by its duly authorized officer this 31st day of October 2001.

BUYERSONLINE.COM, INC.

By: \_\_\_\_\_

  
Paul Jarman, Vice President

**CERTIFICATE OF MERGER  
OF  
UNITED CARRIER NETWORKS, INC.  
INTO  
BUYERS UNITED, INC.**

(Under Section 253 of the General Corporation Law of the State of Delaware)

Buyers United, Inc., a Delaware corporation, does hereby certify:

**FIRST:** The name and state of incorporation of each of the constituent corporations of the merger is as follows:

- (a) United Carrier Networks, Inc., a Utah corporation ("UCN"); and
- (b) Buyers United, Inc., a Delaware corporation ("Buyers United").

**SECOND:** The authorized capital stock of UCN is one million shares of Common Stock, \$.0001 par value, of which 100 shares are outstanding; Buyers United owns 100 percent of such outstanding shares. UCN is merged with and into Buyers United, and Buyers United is the surviving corporation. The following resolution was duly adopted by the Board of Directors of Buyers United on October 15, 2002, to wit:

**RESOLVED**, that the merger of United Carrier Networks, Inc., a Utah corporation and wholly-owned subsidiary ("UCN"), into Buyers United, Inc., a Delaware corporation and parent of said subsidiary, in accordance with the laws of the states of Utah and Delaware pertaining to the merger of parent and subsidiary corporations, is hereby approved; that pursuant to the merger the 100 outstanding shares of common stock of UCN shall be extinguished; that the separate existence of UCN shall cease and Buyers United of Delaware shall acquire all of the assets, liabilities, rights, and obligations of UCN; and that the executive officers are authorized to prepare and file such certificates and documents and to take such further action as they deem necessary to effectuate the merger contemplated by this resolution.

**THIRD:** The name of the surviving corporation is Buyers United, Inc.

**FOURTH:** The Certificate of Incorporation of Buyers United shall be the Certificate of incorporation of the surviving corporation.

**FIFTH:** The effective date of the merger shall be December 31, 2002.

IN WITNESS WHEREOF, Buyers United, Inc. has caused this Certificate to be signed by its President as of the 26<sup>th</sup> day of December, 2002.

BUYERS UNITED, INC.

By:

  
Paul Jarman, President

**CERTIFICATE OF OWNERSHIP  
OF  
BUYERS UNITED, INC. (Utah)  
INTO  
BUYERS UNITED, INC. (Delaware)**  
(Under Section 253 of the General Corporation Law of the State of Delaware)

Buyers United, Inc., a Delaware corporation, does hereby certify:

**FIRST:** The name and state of incorporation of each of the constituent corporations of the merger is as follows:

- (a) Buyers United, Inc., a Utah corporation ("BUI"); and
- (b) Buyers United, Inc., a Delaware corporation ("Buyers United")

**SECOND:** The authorized and outstanding capital stock of BUI is 100 shares of Common Stock, no par value, and Buyers United owns 100 percent of such outstanding shares. BUI is merged with and into Buyers United, and Buyers United is the surviving corporation. The following resolution was duly adopted by the Board of Directors of Buyers United on February 20, 2002, to wit:

**RESOLVED**, that the merger of Buyers United, Inc., a Utah corporation and wholly-owned subsidiary ("BUI"), into Buyers United, Inc., a Delaware corporation and parent of said subsidiary, in accordance with the laws of the states of Utah and Delaware pertaining to the merger of parent and subsidiary corporations, is hereby approved; that pursuant to the merger the 100 outstanding shares of common stock of BUI shall be extinguished; that the separate existence of BUI shall cease and Buyers United of Delaware shall acquire all of the assets, liabilities, rights, and obligations of BUI; and that the executive officers are authorized to prepare and file such certificates and documents and to take such further action as they deem necessary to effectuate the merger contemplated by this resolution.

**THIRD:** The name of the surviving corporation is Buyers United, Inc.

**FOURTH:** The Certificate of Incorporation of Buyers United shall be the Certificate of incorporation of the surviving corporation.

**FIFTH:** The effective date of the merger shall be December 31, 2002.

IN WITNESS WHEREOF, Buyers United, Inc. has caused this Certificate to be signed by its President as of the 26<sup>th</sup> day of December, 2002.

BUYERS UNITED, INC. (Delaware)

By:

  
Paul J. Jaman, President

**CERTIFICATE OF AMENDMENT OF THE  
CERTIFICATE OF INCORPORATION OF  
BUYERS UNITED, INC.**

Buyers United, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

The amendment to the Corporation's Certificate of Incorporation set forth below was duly adopted by resolutions approved by the Corporation's board of directors and stockholders in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware. The amendment will be effective as of 12:01 am Eastern Time on July 15, 2004.

\*\*\*\*\*

The Certificate of Incorporation of the corporation is amended by striking Article I in its entirety and replacing there for:

**ARTICLE I  
NAME**

The name of the Corporation is UCN, Inc.

\*\*\*\*\*

**IN WITNESS WHEREOF**, Buyers United, Inc., has caused this Certificate to be signed by its duly authorized officer this 29th day of June 2004.

**BUYERS UNITED, INC.**

By: /s/ Paul Jarman  
Paul Jarman, President

EXHIBIT B

Certificate of Authority to Conduct Business

FILED

AUG 10 2004

STATE OF SOUTH CAROLINA  
SECRETARY OF STATE

AUG 10 2004

Mark Hammond APPLICATION FOR AN AMENDED CERTIFICATE OF AUTHORITY BY A FOREIGN CORPORATION TO TRANSACT BUSINESS IN SOUTH CAROLINA Mark Hammond 2  
SECRETARY OF STATE OF SOUTH CAROLINA SECRETARY OF STATE

TYPE OR PRINT CLEARLY WITH BLACK INK

Pursuant to Section 33-15-104 of the 1976 South Carolina Code of Laws, as amended, the undersigned corporation hereby applies for an amended certificate of authority to transact business in the State of South Carolina and for that purpose submits the following statement:

1. The name of the corporation is Buyers united, inc.
- 1a. The above named corporation received a Certificate of Authority to transact business in South Carolina on September 26, 2002.
2. This application is filed for the following reason (complete all applicable items):
  - ☒ a. The corporation has changed its corporate name as follows UCN, Inc.
  - ☐ b. The corporation has changed its duration to \_\_\_\_\_
  - ☐ c. The corporation has changed the state or country of its incorporation to \_\_\_\_\_
3. The name of the corporation for the purpose of transacting business in South Carolina is (See Sections 33-4-101 and 33-15-106) and see Section 33-19-500(b)(1) if the corporation is a professional corporation UCN, Inc.
4. It is incorporated as (check applicable item) ☒ a general business corporation, ☐ a professional corporation under the laws of the state of Delaware
5. The date of its incorporation is April 1999 and the period of its duration is perpetual
6. The address of the principal office of the corporation in the jurisdiction of its incorporation is 14870 S. DUNDY EXPRESS DRIVE in the city of Bluffdale  
Street Address  
and the state of UT 84065  
Zip Code
7. The address of the registered office in the state of South Carolina is 2 Office Park Court Ste 103  
Street Address  
in the city of Columbia, South Carolina 29223  
Zip Code
8. The name of the registered agent in this state at such address is NATIONALS REGISTERED AGENTS, INC.
9. The name and usual business address of the corporation's directors (if the corporation has no directors, then the name and address of those persons who are exercising the statutory authority



Buyers united, inc.  
Name of Corporation

a) Name of Directors

Business Address

Theodore Stern

14870 S. Pony Express Dr. Bluffdale, IL 60405

Steven Barnett

same

Tamer Ozanne

same

Paul Kueppe

same

Blake Hisher

same

b) Name and Office of  
Principal Officers

Business Address

Theodore Stern CEO

14870 S. Pony Express Dr. Bluffdale, IL 60405

Paul Taiman President

same

David Gryn CFO

same

Doug Smith VP

same

Kimm Partridge Secretary

same

10. The aggregate number of shares which the corporation has authority to issue, itemized by classes and series, if any, within a class:

Class of Shares (and Series, if any)

Authorized No. of Each Class (and Series)

Preferred (1 Series A & B)

15 million

Common

100 million

11. Unless a delayed date is specified, this application shall be effective when accepted for filing by the Secretary of State (See Section 33-1-230): \_\_\_\_\_

Date July 29, 2004

Buyers united, inc.  
Name of Corporation

Kimm Partridge  
Signature of Officer

Kimm Partridge, corporate  
Type or Print Name and Office

## **EXHIBIT C**

### **Background and Experience of Management**

#### **Background in Telecommunications Industry**

UCN, Inc. ("UCN") is a telecommunications company that offers a wide range of long distance, toll free, data transmission, and related communication service options at competitive prices, and provides to its customers a standard of service it believes is comparable to other industry participants. UCN is a publicly-traded corporation organized under the laws of the state of Delaware. UCN stock trades on the OTC board under the ticker symbol – UCNN.OB. Its principal place of business is 14870 South Pony Express Road, Bluffdale, UT 84065. Currently, UCN provides resold long distance to business and residential consumers in South Carolina pursuant to authority granted by the Commission and is assigned Utility No. U-5979-C. In June 2004, UCN changed its name from Buyers United, Inc., d/b/a buyersonline, d/b/a United Carrier Networks to UCN, Inc.

The telecommunications services currently offered by UCN include the following:

- o Switched long distance services to business and residential customers
- o Dedicated access long distance service
- o Toll-free 800/888/877/866 services
- o Dedicated data transmission
- o Private line data services
- o Calling card services
- o Conference calling
- o Automatic call distribution
- o Interactive voice response
- o Outbound dialing and voice message broadcasting
- o Fax to email
- o Voice mail
- o Real time account management

UCN offers these services individually or in a suite of services tailored to a customer's needs. During 2003, UCN acquired and integrated into its operations a voice over Internet protocol network (VoIP Network) that enables the Company to offer a number of services in the form of software solutions that are delivered through our VoIP Network.

For the past eight years UCN has been engaged in the business of reselling telecommunications services provided by others to UCN at wholesale rates. Domestic long distance services make up a major portion of the Company's sales with the other services listed above making smaller contributions to the sales mix.

UCN services approximately 150,000 business and residential consumers across America. Over the past several years, UCN has refined its business focus to address specific niche opportunities in the vast communications industry. UCN is now marketing its services primarily through independent sales agents to business customers.

By this Application, UCN seeks additional authority to allow the company to offer existing and prospective customers resold and/or facilities-based (leased) competitive local exchange telecommunications services. Applicant seeks authority to provide these services throughout the entire state of South Carolina, or to the extent the facilities of its underlying carriers permit. The resold and facilities-based local exchange services Applicant proposes to offer include business class local loop connectivity and transmission, including 2-wire, 4-wire, DS-0, DS-1, DS-3, and OCN local loops necessary to connect customers to UCN's nearest point of presence (POP). These services will initially be provided through commercial resale agreements with facilities-based competitive suppliers, such as AT&T, MCI, and Level 3. Applicant reserves the ability to resell or lease network elements from Verizon, SNET and other incumbent local exchange carriers in the future, as the market for its services dictates.

UCN has an experienced management team with exceptional depth in general management, sales, telecommunications and the contact center market in specific. Following are short biographical backgrounds on key members of UCN's board and management team.

## MANAGEMENT TEAM

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**Theodore Stern, Chairman** - Mr. Stern was Senior Executive Vice President and member of the Board of Directors of Westinghouse Electric Corporation. The revenues of businesses reporting to Mr. Stern totaled over \$3 billion; the number of employees totaled over 50,000. After retiring from Westinghouse Electric, Mr. Stern served as Vice Chairman of the Board of Superconductivity, Inc., a small technology company located in Madison, WI. He is currently on the board of directors of Distributed Energy Systems Corporation, a manufacturer of renewable generation systems located in Wallingford, CT. He holds a Bachelor of Mechanical Engineering from the Pratt Institute and a Master of Science degree in Theoretical Mathematics from New York University. Mr. Stern is a member of the National Academy of Engineering.

**Paul Jarman, CEO & President** - Mr. Jarman is one of the original founders of Buyers United, now UCN. Previously, Mr. Jarman was an executive with HealthRider, Inc. As Director of Retail Operations, he managed 250 retail locations and over 1,100 employees, generating \$95 million in annual sales. In a prior position with HealthRider, he was responsible for new product development in the exercise, massage, and nutritional categories. He earned a Bachelor of Science degree in Accounting from the University of Utah and is a Certified Public Accountant.

**David R. Grow, CFO** - Mr. Grow has over 21 years of business experience. He joined UCN in June 2003. From January 2002 to June 2003, Mr. Grow served as the CFO and board member for Spectrum Engineers, Inc., a mechanical and electrical engineering firm based in Salt Lake City, Utah. From February 2000 to January 2002, he served as the CFO and board member of webBASIS, Inc, a web-based software development company in Bakersfield, California. Other positions include five years as CFO of Daw Technologies, Inc, a manufacturer and installer of clean rooms for the semiconductor industry, three years as corporate controller of WordPerfect Corporation, a software development company, and ten years in public accounting with PriceWaterhouseCoopers. Mr. Grow received a B.S. in accounting from the University of Utah and is a certified public accountant.

**G. Douglas Smith, Executive Vice President, Sales** - Prior to UCN, Mr. Smith was the co-founder of HealthRider, Inc., an exercise equipment company based in Salt Lake City, Utah. After serving in several roles over a six year period, he completed his tenure as the Senior Vice President of Sales and Marketing. Mr. Smith was instrumental in successfully establishing 200 nationwide retail locations, managing a \$60 million annual advertising budget, developing wholesale relationships with organizations such as Sears, Target, Sports Authority and Costco, growing HealthRider's workforce to over 1,400 employees and achieving annual sales revenue of \$241 million in its fifth year of business. Mr. Smith received an education in International Business from Brigham Young University and is fluent in Japanese and Spanish.

**Scott Welch, Executive Vice President, Operations** - Mr. Welch has fifteen years of IT experience in the telecommunications industry. He has eight years of experience developing Enhanced 800 applications in the SS7 environment. He served as Vice President of Information Technology at Access Long Distance, Vice President of Application Development at McLeodUSA, and Director of Information Technology at Mpower Communications. Mr. Welch received his B.S. degree in Computer Science from Utah Valley State College.

**Mike Shelton, CTO** - Mr. Shelton came to UCN through an agreement with MyACD, a company he founded in 1999. Prior to MyACD, Mr. Shelton was founder and president of Cumulus Information Services. Cumulus provided outsourced business services, including: call center services, supply chain management, order fulfillment, assembly, duplication, and consulting. Cumulus' software division developed the award-winning ClearView call center product suite, which was subsequently sold to Harris Communications Products Division. Mr. Shelton has 17 years of professional experience in various capacities including: corporate management, call center management, telecommunications management, sales and sales management, product management, marketing, quality assurance, financial services, software design and development, and information technology. He has founded, built, managed, and sold various successful businesses. Mr. Shelton is a recognized industry expert and has conducted extensive training, and consulting throughout the world on a variety of call center topics.

***Kevin L. Childs, Vice President, inContact Solutions*** - Mr. Childs joined the company after successfully executing an exclusive cooperative agreement between the company and MyACD, a contact center software development company. Previously, Mr. Childs was a Senior Regional Vice President with Adecco Employment, a large human capital and staffing consulting firm. Mr. Childs led a \$100m operation, a staff of 120 and 4,500 associates, supporting human capital initiatives for Florida-based employers and many contact centers for leading US-based financial institutions and Fortune 1000 companies. Prior to Adecco, Mr. Childs held several senior management positions with the Salt Lake-based operation of SOS Services between 1991 and 1998.

***Jon B. Heaps, Vice President, Agent Partner Sales*** - Mr. Heaps has over 15 years experience in sales management, including 7 years of executive-level management. He has broad experience in telecommunications, technology and channel-based market development and distribution. He joined the company after several years with Touch America and Qwest Communications, where he served as Director of Partner Channel and Wholesale Accounts and then Director of the South Region where he was responsible for overall operation and profitability.

***Jan Johnson, Vice President, Marketing & Training***- Ms. Johnson has over 20 years of experience in the computer industry and over 14 years experience in various marketing management positions with software- and network-oriented companies. She spent four and half years with Novel, during its high growth years, serving as Director of worldwide public relations, then moving to a sales program development position supporting the direct channel, then finally to a start-up division where she functioned as director of marketing, focused on a reseller channel strategy. After Novell, she held various executive level management positions with four early-stage, venture funded startups, one of which was sold to a market leader in the e-commerce space for \$10 million. Prior to her company experience, Ms. Johnson was a business journalist holding positions with several publications, including Business Week magazine and Datamation magazine. She graduated Magna Cum Laude from the University of South Florida, Tampa, with a B.A degree, then graduated with honors from the University of Missouri-Columbia with a Masters.

***Tom Milligan, Vice President, Customer Support*** - Mr. Milligan came to the company in 2002 with over 13 years experience in the contact center industry. His primary responsibility is to oversee all aspects of product and technical support for UCN's InContact products. Mr. Milligan provides pre-sales consulting services and ongoing post-sales support. Prior to joining UCN, Mr. Milligan's experience includes positions with Franklin Covey, HealthRider, I-Link, and eCallogy - the primary contact center vendor for the 2002 Salt Lake Olympic Winter Games – where he served as VP of Operations.

## BOARD OF DIRECTORS

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**Theodore Stern, Chairman** - Mr. Stern was Senior Executive Vice President and member of the Board of Directors of Westinghouse Electric Corporation. The revenues of businesses reporting to Mr. Stern totaled over \$3 billion; the number of employees totaled over 50,000. After retiring from Westinghouse Electric, Mr. Stern served as Vice Chairman of the Board of Superconductivity, Inc., a small technology company located in Madison, WI. He is currently on the board of directors of Distributed Energy Systems Corporation, a manufacturer of renewable generation systems located in Wallingford, CT. He holds a Bachelor of Mechanical Engineering from the Pratt Institute and a Master of Science degree in Theoretical Mathematics from New York University. Mr. Stern is a member of the National Academy of Engineering.

**Paul Jarman, President and Director** - Mr. Jarman is one of the original founders of Buyers United, now UCN. Previously, Mr. Jarman was an executive with HealthRider, Inc. As Director of Retail Operations, he managed 250 retail locations and over 1,100 employees, generating \$95 million in annual sales. In a prior position with HealthRider, he was responsible for new product development in the exercise, massage, and nutritional categories. He earned a Bachelor of Science degree in Accounting from the University of Utah and is a Certified Public Accountant.

**Steve Barnett, Director** - Mr. Barnett has spent the past 27 years as a principal and CEO of eight companies having annual revenues as high as \$75 million and ranging from manufacturing and distribution to financial and management services. In 1970, he co-founded an equipment leasing company specializing in hospitals and healthcare facilities. Subsequently, he co-founded an international, turnkey, hospital equipment company, focused on the Latin America market. He served as CEO for both companies until 1986. Mr. Barnett graduated from Carleton College with a Bachelor of Science degree and from the University of Chicago Law School with a Doctor of Jurisprudence degree. He practiced law in Chicago for five years.

**Blake O. Fisher, Jr.** - Mr. Fisher, age 60, has been providing management and financial consulting to the telecommunications and utility industries since May 2002, including financial consulting to the USDA on Rural Utilities Service's broadband program. From May 2004 to the present he has served as chief financial officer for Fiber Utilities of Iowa, an entity that provides operation and construction services to municipal utilities. From May 2002 to May 2004 he was retired from business activities. From February 1996 to May 2002, he held senior management positions with McLeodUSA, a telecommunications provider, initially as Chief Financial Officer, then President of the company's Western region and as Chief Development Officer.

**Paul F. Koeppe** - Mr. Koeppe, age 54, is currently a director of Distributed Energy Systems Corp., a public company engaged in the business of creating and delivering products and services to the energy marketplace. He has served in this role since the acquisition of Northern Power Systems in December, 2003. He had been a director of Northern Power since 1998. Prior to his retirement in 2001, Mr. Koeppe was Executive Vice President of American Superconductor, an electricity solutions company, which had acquired Superconductivity, Inc. in 1997, a manufacturer of superconducting magnetic energy storage systems, which he founded and served as President. From 1993 to 1995, Mr. Koeppe was acting CEO and Chairman of the Executive Committee of the Board of Directors of Best Power, Inc., a supplier of uninterruptible power supply packages.

**James H. Ozanne** - Mr. Ozanne, age 60, has been Chairman of Greenrange Partners, a venture capital investment company, since 1996. He currently serves on the board of Distributed Energy Systems Corp. and as Chairman of the Board of PECO Pallet, a privately owned startup in the grocery pallet rental business. Mr. Ozanne is also the Restructuring Officer of Select Portfolio Servicing, Inc., a mortgage servicing company owned by PMI Group and Financial Security Assurance.

### **Other Relevant Information Concerning Managerial Capability**

UCN's CEO and President, Paul Jarman, first came to the Company in April 1997. Mr. Jarman has served as an officer of UCN during the past five years, first as an Executive Vice President, as President since December 2002, and, since January 1, 2005, as President and Chief Executive Officer. In his current capacity as President and CEO, Mr. Jarman is responsible for all facets of UCN's operations.

Mr. Jarman came to UCN from HealthRider, where he was employed from March 1994 to August 1996, first as Texas Regional Manager for 15 retail locations, then Western Area Manager in charge of 95 retail locations, and finally Acting Director of Retail Operations managing 250 retail locations. In August 1996, Mr. Jarman moved to HealthRider's marketing department as the Director of New Product Development, where he served until April 1997.

Mr. Jarman successfully guided UCN's acquisition and integration of valuable technology and customer base assets, beginning in 2002 with the purchase of Touch America, Inc.'s long distance customer base. With this acquisition, UCN substantially grew its customer base and scope of operations. Recently, UCN increased its focus on the small and medium enterprise (SME) business markets. Under Mr. Jarman's leadership, UCN has grown from a small telecommunications reseller focused on the low-margin, high churn residential consumer into an integrated telecommunications and advanced communications technology leader in the high-margin, high growth SME market.

Theodore Stern, the former Chief Executive Officer, continues to serve as Chairman of the Board of UCN. Mr. Stern remains integrally involved in developing and advancing UCN's mission. Mr. Stern retired as senior executive vice president and member of the board of directors of Westinghouse Electric Corporation at the end of 1992, after 34 years of service in a variety of positions with that company. After retiring from Westinghouse Electric, Mr. Stern served as vice chairman of the board of directors of Superconductivity, Inc., of Madison, Wisconsin, a small technology company, until it was acquired in April 1997. Mr. Stern currently is a member of the board of directors of Northern Power Systems of Waitsfield, Vermont, a manufacturer of renewable generation systems. Mr. Stern is also self-employed as a consultant to manufacturing companies.

EXHIBIT D

Financials



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**FORM 10-Q**

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended **September 30, 2004**

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File No. 0-26917

**UCN, INC.**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**

(State or Other Jurisdiction of  
Incorporation or Organization)



**14870 Pony Express Road, Bluffdale, Utah 84065**

(Address of Principal Executive Offices)

**(801) 320-3300**

(Registrant's Telephone Number, Including Area Code)

\_\_\_\_\_  
(Former Name, Address and Fiscal Year, if Changed Since Last Report)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

**APPLICABLE ONLY TO CORPORATE ISSUERS:**

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date: 14,226,818 shares of common stock as of November 1, 2004.

**FORM 10-Q**  
**UCN, INC.**

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# UCN, INC.

## CONDENSED CONSOLIDATED BALANCE SHEETS - (Unaudited)

	September 30, <u>2004</u>	December 31, <u>2003</u>
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 1,007,296	\$ 3,055,384
Restricted cash	1,627,636	1,569,336
Accounts and other receivables, net	7,922,964	8,162,483
Other current assets	442,411	243,844
Total current assets	<u>11,000,307</u>	<u>13,031,047</u>
Property and equipment, net	3,181,210	2,424,642
Intangible assets, net	6,617,414	8,018,682
Other assets	479,913	496,787
Total assets	<u><u>\$ 21,278,844</u></u>	<u><u>\$ 23,971,158</u></u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)</b>		
Current liabilities:		
Line of credit	\$ 1,920,328	\$ 4,093,782
Current portion of long-term debt and capital lease obligations	1,985,462	7,781,484
Trade accounts payable	7,055,113	11,248,152
Accrued liabilities	1,921,255	1,828,864
Total current liabilities	<u>12,882,158</u>	<u>24,952,282</u>
Long-term debt and capital lease obligations	<u>30,489</u>	<u>646,126</u>
Total liabilities	12,912,647	25,598,408
Commitments and contingencies (note 10)	-	-
Stockholders' equity (deficit):		
Preferred stock, \$0.0001 par value, 15,000,000 shares authorized; Series A 8% cumulative convertible preferred stock; 1,827,500 and 1,865,000 shares issued and outstanding (liquidation values of \$3,655,000 and \$3,730,000)	183	187
Series B 8% cumulative convertible preferred stock; 417,800 and 721,729 shares issued and outstanding (liquidation values of \$4,178,000 and \$7,217,290)	42	72
Common stock, \$0.0001 par value; 100,000,000 shares authorized; 13,896,818 and 7,604,584 shares issued and outstanding	1,390	760
Additional paid-in capital	31,564,071	20,193,148
Warrants and options outstanding	3,352,172	3,928,110
Accumulated deficit	(26,551,661)	(25,749,527)
Total stockholders' equity (deficit)	<u>8,366,197</u>	<u>(1,627,250)</u>
Total liabilities and stockholders' equity (deficit)	<u><u>\$ 21,278,844</u></u>	<u><u>\$ 23,971,158</u></u>

See accompanying notes

# UCN, INC.

## CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS - (Unaudited)

	<u>Three Months Ended September 30,</u>	
	<u>2004</u>	<u>2003</u>
Revenues from telecommunications services	\$ 15,711,720	\$ 16,439,065
Operating expenses:		
Costs of revenues	8,711,136	8,849,635
General and administrative	3,610,703	3,839,901
Selling and promotion	3,937,226	3,097,090
Total operating expenses	<u>16,259,065</u>	<u>15,786,626</u>
Income (loss) from operations	(547,345)	652,439
Other income (expense):		
Interest income	7,325	3,689
Interest expense	<u>(138,837)</u>	<u>(468,890)</u>
Total other expense, net	<u>(131,512)</u>	<u>(465,201)</u>
Net income (loss)	(678,857)	187,238
8% Preferred dividends on Series A and B preferred stock	<u>(157,948)</u>	<u>(237,124)</u>
Net loss applicable to common stockholders	<u>\$ (836,805)</u>	<u>\$ (49,886)</u>
Net loss per common share:		
Basic and diluted	(\$0.06)	(\$0.01)
Weighted average common shares outstanding:		
Basic	13,805,806	6,414,135
Diluted	14,466,112	7,372,521

See accompanying notes

# UCN, INC.

## CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS - (Unaudited)

	<u>Nine Months Ended September 30,</u>	
	<u>2004</u>	<u>2003</u>
Revenues from telecommunications services	\$ 49,183,336	\$ 48,211,821
Operating expenses:		
Costs of revenues	26,862,694	26,106,281
General and administrative	11,391,190	11,571,010
Selling and promotion	10,664,801	8,119,473
Total operating expenses	<u>48,918,685</u>	<u>45,796,764</u>
Income from operations	264,651	2,415,057
Other income (expense):		
Interest income	28,631	9,090
Interest expense	(687,954)	(1,460,985)
Gain on early extinguishment of debt	109,150	-
Total other expense, net	<u>(550,173)</u>	<u>(1,451,895)</u>
Net income (loss)	(285,522)	963,162
8% Preferred dividends on Series A and B preferred stock	<u>(516,612)</u>	<u>(634,212)</u>
Net income (loss) applicable to common stockholders	<u>\$ (802,134)</u>	<u>\$ 328,950</u>
Net income (loss) per common share:		
Basic and diluted	(\$0.07)	\$0.05
Weighted average common shares outstanding:		
Basic	12,048,689	6,285,038
Diluted	13,175,148	6,330,183

See accompanying notes

# UCN, INC.

## CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS - (Unaudited)

	<u>Nine Months Ended September 30,</u>	
	<u>2004</u>	<u>2003</u>
Cash flows from operating activities:		
Net income (loss)	\$ (285,522)	\$ 963,162
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Depreciation and amortization	3,056,694	3,034,514
Amortization of discount on notes	-	5,312
Amortization of discount on long-term debt	122,562	340,480
Amortization of note financing costs	75,000	97,598
Amortization of deferred consulting fees	-	15,626
Changes in operating assets and liabilities:		
Accounts and other receivables	239,519	(3,333,853)
Other assets	(201,102)	(692,807)
Trade accounts payable	(4,198,105)	3,149,416
Accrued liabilities	458,187	569,406
Net cash provided by (used in) operating activities	<u>(732,767)</u>	<u>4,148,854</u>
Cash flows from investing activities:		
Decrease in other assets	(22,207)	(52,125)
Acquisition of customer base	(757,856)	-
Purchases of property and equipment	<u>(1,615,057)</u>	<u>(694,314)</u>
Net cash used in investing activities	<u>(2,395,120)</u>	<u>(746,439)</u>
Cash flows from financing activities:		
Increase in restricted cash	(58,300)	(579,584)
Net borrowings and payments under line of credit	(2,173,454)	1,588,412
Borrowings on long-term debt, net of debt issuance costs	-	2,299,955
Proceeds from exercise of options and warrants	1,944,500	-
Private placement of common stock, net of offering costs	8,101,274	-
Repurchase of common stock	(500,000)	(4,852)
Principal payments on long-term debt	<u>(6,234,221)</u>	<u>(6,667,047)</u>
Net cash provided by (used in) financing activities	<u>1,079,799</u>	<u>(3,363,116)</u>
Net increase (decrease) in cash and cash equivalents	(2,048,088)	39,299
Cash and cash equivalents at the beginning of the period	<u>3,055,384</u>	<u>994,360</u>
Cash and cash equivalents at the end of the period	<u><u>\$ 1,007,296</u></u>	<u><u>\$ 1,033,659</u></u>

See accompanying notes

# UCN, INC.

## CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS - (Unaudited)

	<u>Nine Months Ended September 30,</u>	
	<u>2004</u>	<u>2003</u>
Supplemental cash flow information:		
Cash paid for interest	\$ 645,819	\$ 860,827
Supplemental schedule of noncash investing and financing activities:		
Issuance of common shares in payment of preferred stock dividend	\$ 785,994	\$ 768,544
Accrual of dividend payable on preferred stock	516,612	634,212
Issuance of common shares for officer's personal guaranty	-	36,300
Issuance of warrants with private placement of common stock	189,336	-
Issuance of warrants with consulting contract	72,465	-
Retirement and replacement of note payable	-	800,000
Conversion of note payable into common stock	300,000	-
Conversion of accrued interest to note payable	-	435,388
Increase in Touch America obligation with amended agreement	-	3,264,576
Issuance of preferred stock to acquire VoIP assets	91,348	1,400,738
Capital expenditures financed with capital lease obligation	-	100,691

See accompanying notes

# UCN, INC.

## CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT) - (Unaudited)

	<u>Preferred Stock</u>		<u>Common Stock</u>		<u>Additional</u>
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>	<u>Paid-in</u>
					<u>Capital</u>
Balance at January 1, 2004	2,586,729	\$ 259	7,604,584	\$ 760	\$ 20,193,148
Issuance of preferred stock in connection with the acquisition of VoIP assets	16,071	2	-	-	91,346
Conversion of preferred shares to common	(357,500)	(36)	1,637,500	164	(128)
Exercise warrants to purchase common stock	-	-	682,000	68	2,149,618
Exercise employee options to purchase common stock	-	-	265,000	27	579,973
Conversion of promissory note to common stock	-	-	150,000	15	299,985
Expiration of warrants to purchase common stock	-	-	-	-	52,553
Private placement of common stock, net of offering costs	-	-	3,782,000	378	7,911,560
Issuance of warrants for services	-	-	-	-	-
Preferred stock dividends	-	-	-	-	-
Issuance of common shares as payment of preferred stock dividends	-	-	290,294	29	785,965
Repurchase of shares from stockholder	-	-	(514,560)	(51)	(499,949)
Net loss	-	-	-	-	-
Balance at September 30, 2004	<u>2,245,300</u>	<u>\$ 225</u>	<u>13,896,818</u>	<u>\$1,390</u>	<u>\$ 31,564,071</u>

See accompanying notes



**UCN, INC.**

**CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT) - (Unaudited)**

	<b>Warrants/ Options Outstanding</b>	<b>Accumulated Deficit</b>	<b>Total</b>
Balance at January 1, 2004	\$3,928,110	\$(25,749,527)	\$(1,627,250)
Issuance of preferred stock in connection with the acquisition of VoIP assets	-	-	91,348
Conversion of preferred shares to common	-	-	-
Exercise warrants to purchase common stock	(785,186)	-	1,364,500
Exercise employee options to purchase common stock	-	-	580,000
Conversion of promissory note to common stock	-	-	300,000
Expiration of warrants to purchase common stock	(52,553)	-	-
Private placement of common stock, net of offering costs	189,336	-	8,101,274
Issuance of warrants for services	72,465	-	72,465
Preferred stock dividends	-	(516,612)	(516,612)
Issuance of common shares as payment of preferred stock dividends	-	-	785,994
Repurchase of shares from stockholder	-	-	(500,000)
Net loss	-	(285,522)	(285,522)
Balance at September 30, 2004	<u>\$3,352,172</u>	<u>\$(26,551,661)</u>	<u>\$ 8,366,197</u>

See accompanying notes

# UCN, INC.

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Unaudited)

September 30, 2004

### 1. Basis of presentation

These unaudited interim financial statements of UCN, Inc. and its subsidiary (collectively, “UCN” or “the Company”) have been prepared in accordance with the rules and regulations of the United States Securities and Exchange Commission (the “Commission”). Such rules and regulations allow the omission of certain information and footnote disclosures normally included in the financial statements prepared in accordance with accounting principles generally accepted in the United States, so long as the statements are not misleading. In the opinion of Company management, these financial statements and accompanying notes contain all adjustments (consisting of only normal recurring adjustments) necessary to present fairly the financial position and results of operations for the periods shown. These interim financial statements should be read in conjunction with the audited financial statements and notes thereto contained in our Annual Report on Form 10-KSB for the year ended December 31, 2003, as filed with the Commission on March 30, 2004.

The results of operations for the three and nine month periods ended September 30, 2004 are not necessarily indicative of the results to be expected for the full year. Certain reclassifications have been made to the financial statements for prior periods in order to conform to the 2004 presentation.

### 2. Summary of significant accounting policies

**Net Income (Loss) Per Common Share:** Basic net income (loss) per common share ("Basic EPS") excludes dilution and is computed by dividing net income applicable to common shareholders by the weighted average number of common shares outstanding during the quarterly and year-to-date periods. Diluted net income (loss) per common share ("Diluted EPS") reflects the potential dilution that could occur if stock options or other common stock equivalents were exercised or converted into common stock. The computation of Diluted EPS does not assume exercise or conversion of securities that would have an antidilutive effect on net income (loss) per common share, and is therefore not presented.

Following is the reconciliation of Basic and Diluted EPS:

	Three months ended September 30, 2004		Nine months ended September 30, 2004	
	2004	2003	2004	2003
Net income (loss) applicable to common stockholders, as reported	<u>\$(836,805)</u>	<u>\$ (49,886)</u>	<u>\$(802,134)</u>	<u>\$ 328,950</u>
<b>Basic EPS:</b>				
Weighted average number of common shares outstanding	<u>13,805,806</u>	<u>6,414,135</u>	<u>12,048,689</u>	<u>6,285,038</u>
Basic net (loss) income per share	<u>\$(0.06)</u>	<u>\$(0.01)</u>	<u>\$(0.07)</u>	<u>\$ 0.05</u>
<b>Diluted EPS:</b>				
Common and common equivalent shares outstanding:				
Weighted average number of common shares outstanding	13,805,806	6,414,135	12,048,689	6,285,038
Common stock equivalents from options and warrants computed on the Treasury Stock method, using the average fair market value of common stock outstanding during the period	<u>660,306</u>	<u>958,386</u>	<u>1,126,459</u>	<u>45,145</u>
Shares used in the computation	<u>14,466,112</u>	<u>7,372,521</u>	<u>13,175,148</u>	<u>6,330,183</u>
Diluted net income per share				<u>\$ 0.05</u>

Stock-Based Compensation: Employee compensation expense is measured using the intrinsic method. No stock-based compensation cost is reflected in net income applicable to common stockholders, since all options had an exercise price equal to or greater than the market price of the underlying common stock at the date of grant. The following table illustrates the effects on net income (loss) applicable to common stockholders and earnings (loss) per share if expense was measured using the fair value recognition provision of Statement of Financial Accounting Standards ("SFAS") No. 123, *Accounting for Stock-Based Compensation*:

	Three months ended <u>September 30,</u>		Nine months ended <u>September 30,</u>	
	<u>2004</u>	<u>2003</u>	<u>2004</u>	<u>2003</u>
<u>Net income (loss) applicable to common stockholders:</u>				
As reported	\$ (836,805)	\$ (49,886)	\$ (802,134)	\$ 328,950
Pro forma stock-option based compensation	<u>(103,410)</u>	<u>(57,567)</u>	<u>(380,310)</u>	<u>(215,376)</u>
Pro forma net income (loss) applicable to common stockholders	\$ <u>(940,215)</u>	\$ <u>(107,453)</u>	\$ <u>(1,182,444)</u>	\$ <u>113,574</u>
<u>Basic and diluted net income (loss) per common share:</u>				
As reported	\$ (0.06)	\$ (0.01)	\$ (0.07)	\$ 0.05
Pro forma basic and diluted net income (loss) per common share	\$ (0.07)	\$ (0.02)	\$ (0.10)	\$ 0.02

We estimated the fair value of options granted under our employee stock-based compensation arrangements at the date of grant using the Black-Scholes model with the following weighted-average assumptions:

	Nine Months Ended <u>September 30,</u>	
	<u>2004</u>	<u>2003</u>
Dividend yield	None	None
Expected volatility	63%	83%
Risk-free interest rate	3.45%	2.12%
Expected life (years)	5.0	4.2
Weighted average fair value of grants	\$1.55	\$1.29

Other Comprehensive Income: There were no components of other comprehensive income other than net income.

Business Segments and Related Information: SFAS No. 131, *Disclosures about Segments of an Enterprise and Related Information*, establishes standards for the way public business enterprises are to report information about operating segments in annual financial statements and requires enterprises to report selected information about operating segments in interim financial reports issued to shareholders. It also establishes standards for related disclosure about products and services, geographic areas and major customers. The Company currently operates in only one business segment.

Long-Lived Assets: In accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, we evaluate the carrying value of long-lived assets, including intangibles, when events or circumstances indicate the existence of a possible impairment, based on projected undiscounted cash flows, and recognize impairment when such cash flows will be less than the carrying values. Measurement of the amounts of impairments, if any, is based upon the difference between carrying value and fair value. Events or circumstances that could indicate the existence of a possible impairment include obsolescence of the technology, an absence of market demand for the product, and/or continuing technology rights protection. Management believes the net carrying amount of long-lived assets will be recovered by future cash flows generated by commercialization of the technology related to the long-lived asset and from cash flows generated from customer lists.

Capitalized Software Costs: In accordance with Statement of Position 98-1, *Accounting for Costs of Computer Software Developed or Obtained for Internal Use*, the Company capitalizes certain costs incurred for the development of internal use software. These costs include the costs associated with coding, software configuration, upgrades, and enhancements. During the three and nine months ended September 30, 2004, the Company capitalized \$117,952 and \$531,222, respectively.

**Recent Accounting Pronouncements:** In March 2004, the Financial Accounting Standards Board ("FASB") reached a consensus on Emerging Issues Task Force (EITF) Issue No.03-1, *The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments*. This pronouncement provides guidance to determine the meaning of other-than-temporary impairment and its application to investments classified as either available-for-sale or held-to-maturity (including individual securities and investments in mutual funds), and investments accounted for under the cost method or the equity method. The guidance for evaluating whether an investment is other-than-temporarily impaired is to be applied in other-than-temporary impairment evaluations made in reporting periods beginning after June 15, 2004. The adoption of Issue No. 03-1 did not have a material impact on the financial statements.

### 3. Customer acquisitions

UCN entered into an agreement to purchase 37 dedicated long distance customers from Source Communications, LLC for \$757,856 in cash in February 2004. The transaction was closed in March 2004. The total purchase price was entirely allocated to customer lists acquired, and is included in intangible assets in the accompanying condensed consolidated balance sheets.

### 4. Gain on early extinguishment of debt

During 2003 the Company entered into a Purchase Agreement to acquire approximately 12,000 long distance customers from Glyphics Communications, Inc. Subsequently, the two parties agreed that UCN would accelerate payments under the agreement in exchange for a discount on the purchase price. The final payment under the agreement was made in February 2004, and the Company recorded a \$109,150 gain on the early extinguishment of the debt.

### 5. Intangible assets

Intangible assets consisted of the following:

	<u>September 30, 2004</u>			<u>December 31, 2003</u>		
	<u>Gross</u>	<u>Accumulated</u>	<u>Intangible</u>	<u>Gross</u>	<u>Accumulated</u>	<u>Intangible</u>
	<u>asset</u>	<u>amortization</u>	<u>assets, net</u>	<u>asset</u>	<u>amortization</u>	<u>assets, net</u>
Customer lists acquired	\$ 11,518,164	\$ 5,752,517	\$ 5,675,647	\$ 10,760,307	\$ 3,840,679	\$ 6,919,628
Technology and patents	<u>1,318,865</u>	<u>467,098</u>	<u>851,767</u>	<u>1,318,865</u>	<u>219,811</u>	<u>1,099,054</u>
	\$ <u>12,837,029</u>	\$ <u>6,219,615</u>	\$ <u>6,617,414</u>	\$ <u>12,079,172</u>	\$ <u>4,060,490</u>	\$ <u>8,018,682</u>

Total amortization expense of intangible assets was \$728,672 for the three months ended September 30, 2004, and \$2,159,125 for the nine months ended September 30, 2004. Depending on the type of customers, the useful lives of customer lists acquired range from 36 to 48 months, and are evaluated for recoverability on an annual basis.

Amortization expense for all intangible assets during the three months ended December 31, 2004, and during the four-year period ending December 31, 2008 is expected to be \$728,672, \$2.7 million, \$2.4 million, \$791,585, and \$31,577, respectively.

### 6. Accrued liabilities

Accrued liabilities consisted of the following:

	<u>September 30,</u> <u>2004</u>	<u>December 31,</u> <u>2003</u>
Accrued commissions	\$ 906,268	\$ 669,523
Accrued dividends	204,151	478,599
Accrued payroll and related costs	591,718	257,824
Other	<u>219,118</u>	<u>422,918</u>
	\$ <u>1,921,255</u>	\$ <u>1,828,864</u>

## **7. Capital Transactions**

During the nine months ended September 30, 2004, investors exercised warrants to purchase a total of 682,000 shares of common stock. Total proceeds received in these transactions was \$1.4 million. Included in these amounts were warrants to purchase 297,500 shares exercised by one of the Company's directors, for which the Company received \$595,000.

On March 15, 2004 the Company closed a private placement to institutional and accredited investors. The Company sold 3,782,000 shares of common stock at \$2.30 per share, or a total of approximately \$8.7 million. Net proceeds of the offering after placement fees and expenses were approximately \$8.1 million. A portion of the expenses associated with this transaction was the issuance to the investment banking firm of 164,125 warrants to purchase common shares at \$2.76 per share that expire March 15, 2007. The fair market value of the warrants, using the Black-Scholes pricing model, was \$189,336.

In connection with the placement, Acceris Communications Inc., formerly I-link Incorporated and the holder of 300,000 shares of Series B Convertible Preferred Stock, converted all of its preferred stock to 1.5 million common shares. Acceris subsequently sold 750,000 of those common shares to the investors in the private placement at \$2.30 per share.

In January and February 2004, three Directors exercised options to purchase a total of 255,000 shares of Common Stock. Total proceeds received by the Company in connection with these exercises was \$555,000.

In December 2003, a holder of 100,000 shares of Series B Convertible Preferred Stock converted all of those shares to 500,000 shares of common stock. In January 2004, the holder sold those common shares plus 14,560 additional shares, or a total of 514,560 shares, to UCN for \$500,000 in a privately negotiated transaction.

In May 2004, a holder of Preferred Stock converted a \$300,000 promissory note into 150,000 shares of common stock at a conversion price of \$2.00 per share. In June 2004, the Company repaid two other promissory notes totaling \$200,000 under prepayment terms that allowed UCN to repay the notes two years earlier than the stated maturity dates. All three of these promissory notes had been secured by equipment.

## **8. Major suppliers**

For the three-month periods ended September 30, 2004 and 2003, approximately 53 and 70 percent, respectively, of the Company's cost of revenue was generated from two telecommunication providers. For the nine-month periods ended September 30, 2004 and 2003, approximately 55 and 71 percent of cost of revenue was generated by the same two providers. As of September 30, 2004 and December 31, 2003, respectively, the Company owed \$3.1 million and \$3.0 million to these providers.

## **9. Related party transactions**

Related party transactions not previously disclosed include the following:

During the nine months ended September 30, 2004 the Company paid Theodore Stern, one of its directors who also is Chief Executive Officer, \$6,250 per month for consulting, marketing, and capital raising activities. At September 30, 2004, there was no amount owed to Mr. Stern.

During the nine months ended September 30, 2004, there were several debt arrangements with directors more fully described in the Company's Form 10-KSB filed with the Securities and Exchange Commission on March 30, 2004. Interest expense on obligations owed to related parties during the three and nine months ended September 30, 2004 was \$36,638 and \$187,807, respectively.

On April 12, 2004, UCN repaid \$2.3 million in promissory notes to one of its directors. The director used \$595,000 of the proceeds to exercise 297,500 warrants.

On April 26, 2004, the Company repaid a \$50,000 note payable to another of its directors.

Three of the Company's current and prior directors participated in the 1999 Series A and 2000 Series B Preferred Stock issuances under the same terms as all other outside investors. In February and August 2004 dividends of Common Stock were paid to all holders of Preferred Stock. Of this amount, the participating directors received a total of 33,054 shares of Common Stock.

## 10. Contingencies and Commitments

In May 2004, the Company entered into a one-year consulting agreement. As part of the consultant's compensation, UCN agreed to issue up to 140,000 five-year warrants to purchase common stock at an exercise price of \$4.00 per share. The fair market value of the warrants were and will be calculated using the Black-Scholes method. Up to 90,000 warrants worth a total of \$72,465 are to vest ratably over a period of one year, or until the consulting agreement is terminated, whichever comes sooner. 50,000 warrants will vest in January 2005 only upon the completion of certain performance measures.

## 11. MyACD acquisition

In October 2003, UCN acquired the exclusive right to sell and manage the enhanced telecommunications functions of MyACD, Inc., a Utah corporation ("MyACD"). MyACD develops and distributes telephony software solutions for call center traffic management and related functions that UCN offers to customers over its VoIP network acquired earlier in 2003. The agreement included a one-year option to purchase MyACD for approximately \$6.2 million, paid over a three-year period beginning in January 2005. During the term of the agreement, UCN had the sole right to manage sales and marketing efforts, customer service, and billing of MyACD customers. In addition, MyACD continued to provide enhanced service development and configuration, and UCN paid MyACD a fixed management fee for these services.

On September 30, 2004, UCN, Inc. entered into a Purchase Option Exercise and Agreement on Related Matters with MyACD, and with Michael L. Shelton ("Shelton") and David O. Peterson ("Peterson"), the holders of all the common stock of MyACD. Under this Option Exercise Agreement:

UCN and MyACD extended the term of the October 2003 Cooperation and Management Agreement through the end of 2004;

UCN exercised its option to purchase all of the capital stock of MyACD from Shelton and Peterson under the October 2003 Purchase Option Agreement; and

UCN, Shelton, and Peterson amended the October 2003 Purchase Option Agreement to schedule the acquisition closing on January 5, 2005, and modified terms of payment and other provisions.

The total purchase price for MyACD is \$6.2 million. The purchase price will be paid in January 2005 when UCN issues to Shelton a promissory note in the principal amount of \$5.6 million, and to Peterson a promissory note in the principal amount of \$581,538. Both notes are non-interest bearing.

Payments required under the Shelton note, which in no case will exceed the \$5.6 million total, are:

- (a) A payment of \$1.4 million on January 5, 2005 and a payment of \$35,255 on January 15, 2005;
- (b) 11 monthly payments on the 15th day of each month beginning February 15, 2005 each in an amount equal to 15.4 percent of MyACD product revenue in each calendar month, but in no event will each such payment be less than \$35,255 or greater than \$135,956;
- (c) 12 monthly payments on the 15<sup>th</sup> day of each month beginning January 15, 2006 each in an amount equal to 15.4 percent of MyACD product revenue in each calendar month, but in no event will each such payment be less than \$90,640 or greater than \$181,280;
- (d) 12 monthly payments on the 15<sup>th</sup> day of each month beginning January 15, 2007 each in an amount equal to 15.4 percent of MyACD product revenue in each calendar month, but in no event will each such payment be less than \$135,956 or greater than \$226,595; and
- (e) Remaining unpaid principal, if any, on or before January 15, 2008.

The first payment under the Shelton note of \$1.4 million due on January 5, 2005 is payable \$231,492 in cash and by issuing to Shelton in lieu of money 562,985 shares of fully paid and non-assessable common stock of UCN.

However, if the average fair market value of the common stock during the 60 trading-day period ending on and including December 31, 2004 is less than \$2.00 per share or if the fair market value of the common stock on January 4, 2005 is less than \$2.00 per share, then in lieu of issuing to Shelton shares of common stock UCN must make the balance of the payment of \$1.1 million in cash. Fair market value of UCN common stock will be determined on the basis of the average of the highest "bid" and lowest "asked" quotations for a share of common stock in the over-the-counter market.

Payments required under the Peterson note, which in no case will exceed \$581,538, are:

- (a) A payment of \$195,385 on January 5, 2005 and a payment of \$4,745 on January 15, 2005;
- (b) 11 monthly payments on the 15th day of each month beginning February 15, 2005 each in an amount equal to 1.6 percent of MyACD product revenue in each calendar month, but in no event will each such payment be less than \$4,745 or greater than \$14,044;
- (c) 12 monthly payments on the 15<sup>th</sup> day of each month beginning January 15, 2006 each in an amount equal to 1.6 percent of MyACD product revenue in each calendar month, but in no event will each such payment be less than \$9,360 or greater than \$18,720;
- (d) 12 monthly payments on the 15<sup>th</sup> day of each month beginning January 15, 2007 each in an amount equal to 1.6 percent of MyACD product revenue in each calendar month, but in no event will each such payment be less than \$14,044 or greater than \$23,405; and
- (e) Remaining unpaid principal, if any, on or before January 5, 2008.

Both notes will be secured by UCN pledging the common stock of MyACD acquired in the transaction as collateral. UCN's payment obligations under the notes may be accelerated by the holders on the occurrence of events of default, which include non-payment, insolvency or bankruptcy, breaches of certain representations and warranties of UCN in the Option Purchase Agreement, or UCN's termination without cause of employment agreements with Shelton or Peterson. The stated term of both employment agreements is up to the date of repayment in full of the two respective promissory notes.

MyACD is the obligor on two promissory notes issued in October 2003 to a former stockholder of MyACD. Upon the acquisition of MyACD as a wholly owned subsidiary in January 2005 the remaining payment obligations on these notes will appear on the balance sheet of UCN as a result of its consolidation with MyACD for financial reporting purposes. One note in the original principal amount of \$575,000 is non-interest bearing, and is payable in monthly installments of \$11,275 beginning October 31, 2003 and continuing through December 31, 2008 when all remaining principal is due and payable in full. At October 1, 2004 the remaining principal due on the foregoing note was \$439,700, and at January 5, 2005 the remaining principal due should be \$405,875. The second note is in the principal amount of \$85,710, is non-interest bearing, and is payable in equal monthly installments of \$2,381 commencing January 5, 2005 and continuing through December 5, 2007 when all remaining principal is due and payable in full. The note in the original principal amount of \$575,000 is secured by a pledge of 2,790,000 shares of the common stock of MyACD. MyACD's payment obligations under both notes may be accelerated by the holder in the event of a payment default, insolvency, or bankruptcy of MyACD.

## **Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

### **Overview**

UCN, Inc. (formerly Buyers United, Inc.) is a domestic telecommunications company that offers and sells a wide range of long distance and related communication services to business and residential customers. Historically we functioned as an aggregator and reseller of telecommunications services provided by others. We intend to continue to pursue and develop this type of business.

In 2003 UCN purchased assets and licensed in perpetuity software that enabled UCN to establish and operate a Voice over Internet Protocol communications network (VoIP Network). With the VoIP Network UCN now offers, as a provider, enhanced services such as automated call distribution. Furthermore, UCN transmits data and other communication services for a portion of the journey over the VoIP Network rather than entirely through third party providers.

In October 2003, UCN acquired the exclusive right to sell and manage the enhanced telecommunications functions of MyACD, Inc., a Utah corporation ("MyACD"), with a one-year option to purchase it at a price of approximately \$6.2 million. On September 30, 2004 UCN exercised the option, and the acquisition of MyACD will be effective January 5, 2005. With the MyACD technology we are now offering a new product approach that combines our national VoIP Network with on-demand proprietary telephony software for contact handling/management applications. We are changing the way mission critical applications are delivered and priced for the contact center marketplace, or for any business or department seeking to improve how it manages the productivity and quality of its customer contact opportunities.

UCN entered into an agreement to purchase 37 dedicated long distance customers from Source Communications, LLC for \$757,856 in February 2004. The transaction was completed in March 2004.

We generate internal growth by pursuing multiple marketing avenues, including using independent agents, value-added resellers, and selling through our direct sales force.

### **Results of Operations**

#### Revenues

Total revenues decreased 4.4 percent to \$15.7 million for the three months ended September 30, 2004 as compared to \$16.4 million for the same period in 2003. For the nine months ended September 30, 2004, revenues increased 2.0 percent to \$49.2 million as compared to \$48.2 million for the same period in 2003. The increase in revenue for the nine months ended September 20, 2004 compared to the same period in 2003 is due to new customers purchased throughout 2003 and the acquisition of customers from Source Communication, LLC, which closed in March 2004. We also generated growth internally from ongoing promotional efforts, primarily involving independent agents. These revenue increases from new and existing customers during the first nine months of 2004 were offset by attrition of our residential customer base.

Our plan since the beginning of 2004 is to focus our marketing effort on business users of telecommunication services, not residential long distance users, because we believe there is a much greater opportunity for a business of our size and resources to increase revenues through the sale of enhanced telecommunications services to business customers rather than through the sale of traditional long distance service to residential customers. With the technology we acquired in 2003 we have developed a menu of enhanced communication services that we are now introducing to our existing business customers and to new prospects through our established independent agent sales channel. As a result of these dynamic changes in our business we are experiencing a transition in our sales mix, the effect of which is reflected in the revenue decrease experienced during the three months ended September



30, 2004. We expect this transition period will continue through the end of 2004 and into 2005. During the transition we believe the downward trend in revenues will continue until the growing momentum in sales of enhanced services overtakes diminished revenue caused by attrition in our residential long distance customer base.

#### Cost of revenues

Cost of revenues for the three month period ended September 30, 2004 was \$8.7 million, a 1.6 percent decrease, compared to \$8.8 million for the comparable period in 2003. For the nine month period ended September 30, 2004, cost of revenues increased to \$26.9 million, a 2.9 percent increase as compared to \$26.1 million for the nine month period ended September 30, 2003. Cost of revenues as a percentage of revenue for the three month period ended September 30, 2004 was 55.4 percent as compared to 53.8 percent during 2003, and was 54.6 percent for the nine months ended September 30, 2004 compared to 54.1 percent for the same period in 2003. The decrease in gross margin in the third quarter of 2004 compared to the third quarter of 2003 is the result of the combination of lower, more competitive pricing we adopted in some of the newer long-distance rate plans and the change in our sales mix from residential customers to business customers.

We expect competitive pressures will continue to depress pricing for traditional long distance and have a negative impact on gross margin for this service. However, enhanced telecommunication services are priced on the basis of number of users and service features selected, so gross margin for that type of revenue is not subject to the same downward pressure as long distance service.

#### General and administrative expenses

General and administrative expenses in the third quarter of 2004 decreased 6.0 percent to \$3.6 million compared to \$3.8 million in the third quarter of 2003, and for the nine months ended September 30, 2004 decreased 1.6 percent to \$11.4 million as compared to \$11.6 million for the nine months ended September 30, 2003. A portion of the difference is attributable to the higher costs we incurred in 2003 to integrate and improve the VoIP Network acquired at the beginning of 2003 compared to the costs of maintaining and upgrading the Network during the first nine months of 2004. In addition, we have continued to improve operating efficiencies in this area, resulting in decreased expenses during 2004.

#### Selling and promotion expenses

Selling and promotion expenses increased 27.1 percent to \$3.9 million during the three month period ended September 30, 2004 from \$3.1 million for the same period in 2003. Such expenses increased 31.3 percent to \$10.7 million for the nine months ended September 30, 2004 compared to \$8.1 million during the nine months ended September 30, 2003. The increases are the result of the transition in our sales mix over the first nine months of 2004 as higher commissioned business customers increased in the first nine months of 2004, and lower commissioned residential customers decreased through attrition. In addition, during the second and third quarters of 2004 we increased expenses related to our various sales channels, including the addition of several sales-related personnel.

#### Other income (expense)

Interest expense for the three month period ended September 30, 2004 was \$138,837, compared to \$468,890 in 2003, and for the nine months ended September 30, 2004 interest expense was \$687,954 compared to \$1.5 million in 2003. The decreases were the result of a reduction in the outstanding debt throughout 2004 compared to 2003.

During the third quarter of 2003, UCN entered into a Purchase Agreement to acquire approximately 12,000 long distance customers from Glyphics Communications, Inc. Subsequently, the two parties agreed that UCN would accelerate payments under the agreement in exchange for a discount on the

purchase price. The final payment under the agreement was made in February 2004, and we recorded a \$109,150 gain during the first quarter of 2004 on the early extinguishment of the debt.

## **Liquidity and Capital Resources**

UCN completed a private placement of common stock on March 15, 2004. UCN sold 3,782,000 shares of common stock at \$2.30 per share, or a total of approximately \$8.7 million. Net proceeds of the offering after placement fees and expenses were approximately \$8.1 million. The net proceeds of the private placement have been used for various purposes, including sales and marketing related programs, funding further development of our VoIP Network, reducing debt, and for working capital and other general corporate purposes.

UCN's current ratio as of September 30, 2004 increased to 0.85:1 from 0.52:1 at December 31, 2003. The components of current assets and current liabilities that changed most significantly since the end of 2003 were the line of credit, the current portion of long-term debt and capital lease obligations, and accounts payable.

During the nine months ended September 30, 2004 long-term debt and the related current portion of long-term debt decreased by \$6.2 million. Included therein was \$2.3 million in note repayments to one of UCN's directors. The director subsequently exercised warrants to purchase 297,500 shares of common stock. The proceeds received by UCN totaled \$595,000. UCN also repaid a \$50,000 note payable to another of its directors. Also included in the long-term debt decrease was the conversion of a \$300,000 promissory note into 150,000 shares of common stock.

UCN has a line of credit agreement with RFC Capital Corporation that expires in January 2006. The available borrowing limit is \$5 million. Interest accrues at prime plus three percent. The facility allows UCN to obtain financing on its eligible accounts receivable, including unbilled receivables and regular monthly billings. The facility is collateralized by the underlying receivables. On September 30, 2004, the amount outstanding, less applied draws by RFC, aggregated \$1.9 million which was the maximum amount available based on eligible accounts receivable. The facility requires UCN to maintain a restricted cash account for the collection of the receivables. As of September 30, 2004, UCN had \$1.42 million of restricted cash specifically associated with the RFC arrangement.

UCN is potentially liable under standby letters of credit aggregating \$120,000 in favor of two municipalities with whom UCN has contracts to provide long distance services. The municipalities routinely require all telecommunication service providers to maintain such letters of credit. One of the letters of credit is secured by restricted cash of \$20,000. Additional restricted cash of \$160,000 provides collateral under wholesale purchase agreements with two vendors, and \$20,000 is on secured deposit with a financial institution that provides credit card processing.

On September 10, 2003, UCN filed a registration statement on Form SB-2 with the Securities and Exchange Commission to register for resale up to approximately 8.8 million shares of common stock underlying outstanding warrants, options and convertible debt. During 2003, investors exercised warrants to purchase 522,500 shares of common stock providing cash to UCN of approximately \$1.0 million. As of September 30, 2004, investors had exercised warrants for an additional 682,000 shares of common stock, providing cash of \$1.4 million.

In October 2003, UCN agreed with MyACD, Inc. to acquire the exclusive right to sell their enhanced telecommunication services, and to manage certain product development activities. Included in the agreement was a one-year option for UCN to purchase MyACD. MyACD develops and distributes telephony software solutions for call center traffic management that UCN presently offers to business customers over its VoIP network. On September 30, 2004, UCN exercised its option to purchase MyACD, scheduled the closing for January 5, 2005, and extended the selling and developmental management rights until the end of 2004. The total purchase price is \$6.2 million, to be paid in January 2005 when UCN will issue non-interest bearing promissory notes to MyACD stockholders. Monthly

payments on the notes will total 17 percent of the previous month's MyACD product and service revenue, with certain minimum and maximum limitations varying over the following three years, and a final payment owing no later than January 2, 2008. The initial payment due in January 2005 is \$1.6 million, of which \$1.1 million is payable in shares of UCN common stock at a guaranteed price of \$2.00.

As of September 30, 2004, UCN had a working capital deficit of \$1.9 million, and current portion of long-term debt and capital lease obligations of \$2.0 million. During November 2004, \$250,000 of this debt was converted into common stock at \$2.00 per share. The remaining long-term debt is unsecured, \$461,325 is payable to the Company's Chairman and CEO of which \$112,500 is convertible into common stock at \$2.00 per share, and \$500,000 is payable to a former director and current shareholder and convertible into common stock at \$2.00 per share. The remaining debt is non-recourse, has no stated maturity date, and principal payments are variable dependent upon receivables collected from designated customers. Accordingly, management believes that because of the relationships with the debt holders the Company will be able to either extend the notes or renegotiate the terms in order to minimize any negative impact on cash flow associated with payment obligations on the debt.

If the convertible debt holders described in the preceding paragraph do not convert the outstanding debt to common stock, or if management is unsuccessful in extending the maturity date on the debt, it may be necessary for the Company to seek additional cash to fund the continuing operations of the Company through new debt instruments or the issuance of additional equity securities.

**Capital Commitments** The following table discloses aggregate information about our contractual obligations including notes payable and lease obligations, and the periods in which payments are due as of September 30, 2004:

<b>Contractual Obligations</b>	<b>Total</b>	<b>Less Than 1 Year</b>	<b>1-3 Years</b>	<b>4-5 Years</b>	<b>After 5 Years</b>
Notes payable <sup>1</sup>	\$ 1,962,793	\$ 1,962,793	\$ -	\$ -	\$ -
MyACD notes payable <sup>2</sup>	6,211,384	1,912,846 <sup>4</sup>	4,298,538		
Capital lease obligations <sup>3</sup>	66,489	34,690	31,799	-	-
Operating lease obligations	1,720,986	521,406	1,199,580	-	-
Total contractual obligations	<u>\$ 9,961,652</u>	<u>\$ 4,431,735</u>	<u>\$ 5,529,917</u>	<u>\$ -</u>	<u>\$ -</u>

1 - Before discount of \$7,993.

2 - Assumes January 2005 closing as planned, and represents the minimum monthly amount owed over the maximum time-frame.

3 - Not including interest of \$5,338.

4 - Of this amount, \$1,125,970 is payable with shares of UCN common stock at \$2.00 per share.

## **Critical accounting policies and estimates**

**Revenue Recognition** – Revenue is derived primarily from business telephony services, including dedicated transport, switched, long distance, and data services. UCN's customers are principally small and medium-sized businesses and residential customers located nationwide. Revenue for the majority of switched access, dedicated, and long distance service is generally billed on a transactional basis determined by customer usage with some fixed rate elements billed in advance. The transactional elements of switched services are billed in arrears and estimates are used to recognize revenue in the period earned. The fixed rate elements billed in advance are recognized over the period the services are provided.

**Accounts Receivable and Allowance for Doubtful Accounts** – Accounts receivable is comprised of amounts billed and billable to customers, net of an allowance for uncollectible amounts. The allowance for doubtful accounts is estimated by management and is based on specific information about customer accounts, past loss experience, and general economic conditions. An account is written off by management when deemed uncollectible, although collections efforts may continue.

Property and Equipment - Property and equipment are stated at cost. Major additions and improvements are capitalized, while minor repairs and maintenance costs are expensed when incurred. In accordance with Statement of Position 98-1, "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use," UCN capitalizes certain costs incurred for the development of internal use software. These costs include the costs associated with coding, software configuration, upgrades, and enhancements.

Long-Lived Assets - Our long-lived assets consist of acquired customer lists, patents, and acquired technology. As September 30, 2004, the carrying value of these assets was \$6,617,414, or 31% of total assets. We evaluate the carrying value of long-lived assets, including intangibles, when events or circumstances indicate the existence of a possible impairment. In our evaluation, we estimate the net undiscounted cash flows expected to be generated by the assets, and recognize impairment when such cash flows will be less than carrying values. Events or circumstances that could indicate the existence of a possible impairment include obsolescence of the technology, an absence of market demand for the product, and/or the partial or complete lapse of continuing technology rights protection.

Stock-Based Compensation - We have a stock option plan that provides for the issuance of common stock options to employees and service providers. Although SFAS No. 123, *Accounting for Stock Based Compensation*, encourages entities to adopt a fair-value-based method of accounting for stock options and similar equity instruments, it also allows an entity to continue measuring compensation cost for stock-based compensation for employees and directors using the intrinsic-value method of accounting prescribed by Accounting Principles Board ("APB") Opinion No 25, *Accounting for Stock Issued to Employees*. We have elected to follow the accounting provisions of APB 25 and to furnish the pro forma disclosures required under SFAS No. 123 for employees and directors, but we also issue warrants to non-employees that are recognized as expense when issued in accordance with the provisions of SFAS No. 123. We calculate compensation expense under SFAS No. 123 using the Black-Scholes option pricing model. In so doing, we estimate certain key variables used in the model. We believe the estimates we use are appropriate and reasonable

Debt Issuance Costs - As an inducement to various investors, shareholders, and board members to lend monies to UCN, shares of common stock and warrants to purchase shares of common stock were issued to them. The fair market value of those shares at the date of issuance has been capitalized as debt issuance costs and is being amortized over the life of the loans.

Income Taxes - UCN recognizes a liability or asset for the deferred income tax consequences of all temporary differences between the tax bases of assets and liabilities and their reported amounts in the financial statements that will result in taxable or deductible amounts in future years when the reported amounts of the assets and liabilities are recovered or settled. These deferred income tax assets or liabilities are measured using the enacted tax rates that will be in effect when the differences are expected to reverse. Recognition of deferred tax assets is limited to amounts considered by management to be more likely than not of realization in future periods.

### **Forward-Looking Statements**

The Private Securities Litigation Reform Act of 1985 provides a safe harbor for forward-looking statements made by UCN, except where such statements are made in connection with an initial public offering. All statements, other than statements of historical fact, which address activities, actions, goals, prospects, or new developments that we expect or anticipate will or may occur in the future, including such things as expansion and growth of our operations and other such matters are forward-looking statements. Any one or a combination of factors could materially affect our operations and financial condition. These factors include competitive pressures, success or failure of marketing programs, changes in pricing and availability of services and products offered to customers, legal and regulatory initiatives affecting customer marketing and rebate programs or long distance service, and conditions in the capital markets. Forward-looking statements made by us are based on knowledge of our business and the environment in which we operate as of the date of this report. Because of the factors listed above, as

well as other factors beyond its control, actual results may differ from those in the forward-looking statements.

#### **Item 4. CONTROLS AND PROCEDURES**

With the participation of management, UCN's chief executive officer and chief financial officer evaluated its disclosure controls and procedures on November 4, 2004. Based on this evaluation, the chief executive officer and the chief financial officer concluded that the disclosure controls and procedures are effective in connection with UCN's filing of its interim report on Form 10-Q for the quarterly period ended September 30, 2004.

Subsequent to November 4, 2004, through the date of this filing of Form 10-Q for the quarterly period ended September 30, 2004, there have been no significant changes in UCN's internal controls or in other factors that could significantly affect these controls, including any significant deficiencies or material weaknesses of internal controls that would require corrective action.

### **PART II. OTHER INFORMATION**

#### **Item 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

During the first half of 2004, preferred stock dividends amounted to \$358,664, consisting of \$146,375 on outstanding shares of Series A 8% cumulative convertible preferred stock, and \$212,289 on outstanding shares of Series B 8% cumulative convertible preferred stock. Virtually all of these dividends were paid through the issuance of 119,239 shares of common stock to holders of the preferred stock in August 2004.

#### **Item 6. EXHIBITS AND REPORTS ON FORM 8-K**

Exhibits: Copies of the following documents are included or furnished as exhibits to this report pursuant to Item 601 of Regulation S-K.

Exhibit	
No.	<u>Title of Document</u>
10.1	Purchase Option Exercise and Agreement on Related Matters between UCN, Inc., MyACD, Inc., Michael L. Shelton, and David O. Peterson dated September 30, 2004*
	Excluding: Exhibit A - Form of Shelton Term Note; Exhibit B - Form of Peterson Term Note; and Exhibit C - Schedule IV - Monthly Budget Payments
31.1	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certifications of the Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

\* This agreement was filed as an exhibit to UCN's report on Form 8-K filed with the Securities and Exchange Commission on October 4, 2004, and is incorporated herein by this reference.

Reports on Form 8-K:

On July 23, 2004, a report on Form 8-K was filed with the Securities and Exchange Commission reporting under Item 4 a change in our independent public accountants, and under Item 5 other information our Annual Meeting of Shareholders held June 29, 2004, changes in the members of the Board of Directors, and the termination of the Director Stock Option Plan.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**UCN, INC.**

Date: November 8, 2004

By: /s/ Theodore Stern, Chief Executive Officer

Date: November 8, 2004

By: /s/ David R. Grow, Chief Financial Officer

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

**FORM 10-KSB**

- ☒ Annual report pursuant to section 13 or 15(d) of the Securities Exchange Act  
of 1934 for the fiscal year ended December 31, 2003, or  
☐ Transition report pursuant to section 13 or 15(d) of the Securities Exchange  
act of 1934 for the transition period from to

*Commission File No. 0-26917*

**BUYERS UNITED, INC.**

(Name of Small Business Issuer as specified in its charter)

Delaware

87-0528557

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(State or Other Jurisdiction of  
Incorporation or Organization)

(IRS Employer  
Identification No.)

14870 Pony Express Road, Bluffdale, Utah 84065

(Address of Principal Executive Offices and Zip Code)

Issuer's Telephone Number: (801) 320-3300

Securities registered under Section 12(b) of the Act: None

Securities registered under Section 12(g) of the Act: Common Stock, Par Value  
\$0.0001

Check whether the issuer (1) filed all reports required to be filed by sections 13 or 15(d) of the Exchange Act during the past 12 months (or such shorter period that the issuer was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Check if there is no disclosure of delinquent filers in response to Item 405 of Regulation S-B in this form, and no disclosure will be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-KSB or any amendment to this Form 10-KSB. ☐

The issuer's revenues for its most recent fiscal year: \$63,312,964.

The aggregate market value of voting stock held by non-affiliates computed on the basis of the last sale price on March 15, 2004, was \$28,739,284.

As of March 15, 2004, the Registrant had outstanding 12,994,079 shares of Common Stock, par value \$0.0001.

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## **PART I**

### **ITEM 1. DESCRIPTION OF BUSINESS**

#### **General**

Buyers United, Inc. is a telecommunications company that offers a wide range of long distance, toll free, data transmission, and related communication service options at competitive prices, and provides to its customers a standard of service it believes is comparable to other industry participants. The telecommunications services we offer include the following:

- o Switched long distance services to business and residential customers
- o Dedicated access long distance service
- o Toll-free 800/888/877/866 services
- o Dedicated data transmission
- o Private line data services
- o Calling card services
- o Conference calling
- o Automatic call distribution
- o Interactive voice response
- o Outbound dialing and voice message broadcasting
- o Fax to email
- o Voice mail
- o Real time account management

These services can be offered individually, or in a suite of services tailored to a customer's needs. During 2003 we acquired and integrated into our operations a voice over Internet protocol network (VoIP Network) that enables us to offer a number of services in the form of software solutions that are delivered through our VoIP Network.

For the past eight years Buyers United has been engaged in the business of reselling telecommunication services provided by others to Buyers United at wholesale rates. Domestic long distance services make up a major portion of our sales with the other services listed above making smaller contributions to our sales mix.

Buyers United now services approximately 150,000 business and residential consumers across America. We have refined our business model over the past several years to address specific niche opportunities in the vast communications industry. Our brand, United Carrier Networks (UCN), was adopted in the last quarter of 2001 for providing our services to business customers. We previously used the brand name BuyersOnline to service residential customers.

Buyers United is now marketing its services primarily through independent agents to business customers. Our UCN web site supports the marketing effort of our agents by providing a resource for exploring and selecting the specialized services and options we offer business customers. During the past year we acquired both business and residential customers by purchase from other providers and may consider opportunities for additional purchases in the future, although at the present time we are not considering any purchase opportunities.

Buyers United was originally formed as a Utah corporation in 1994. In March 1999, Buyers United changed its corporate domicile from Utah to Delaware through a merger with a Delaware corporation formed for that purpose. When we changed the corporate domicile our name became BUI, Inc., and we effected a 1-for-4 reverse split in the issued and outstanding common stock. On April 20, 2000, we changed our name to BuyersOnline.com, Inc., and on November 20, 2001, our name was changed again to Buyers United, Inc.

#### Recent developments

In March 2004 Buyers United sold 3,782,000 shares of common stock at \$2.30 per share, or a total of approximately \$8.7 million, in a private placement to institutional and accredited investors. Net proceeds of the offering after placement fees and expenses were approximately \$8.1 million. The net proceeds of the private placement are intended to be used for various corporate purposes, including sales and marketing related programs, funding further development of

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our VoIP Network, reducing debt, and for working capital and other general corporate purposes. Buyers United intends to file a registration statement under the Securities Act of 1933 to permit resale of the shares sold in the offering.

Buyers United entered into an agreement to purchase 37 dedicated long distance customers from Source Communications, LLC for \$750,000 in February 2004. Closing of the acquisition was subject to complying with applicable federal and state regulation pertaining to transfer of the customers. All of the regulatory requirements were satisfied and the acquisition of the customers is completed.

In October 2003, Buyers United acquired the exclusive right to sell and manage the enhanced telecommunications functions of MyACD, Inc., with a one-year option to purchase MyACD. MyACD develops and distributes telephony software solutions for call center traffic management and related functions that Buyers United can now offer to its customers over its VoIP Network. During the term of the agreement, Buyers United has the sole right to manage sales, service and billing of MyACD services. Under the agreement MyACD will continue to provide enhanced service development and configuration and Buyers United will reimburse MyACD for actual costs related to these activities.

During August 2003, Buyers United purchased approximately 12,000 long distance customers from Glyphics Communications, Inc. for \$543,558.

In December 2002, Buyers United entered into an agreement to purchase assets of Acceris Communications Inc. (formerly I-Link, Inc.) and its subsidiary, I-Link Communications, Inc., and license in perpetuity software developed by Acceris, all of which comprise the VoIP Network we now own and operate. Concurrently with the agreement for the purchase of the assets, Buyers United assumed management of the assets to be acquired pending the closing of the purchase. The transaction was closed in May 2003, with several outstanding accounts to reconcile. The assets acquired include dedicated equipment required for operating the VoIP Network, customers of I-Link Communications serviced through the network, and certain trademarks. In consideration for the assets and software license, Buyers United issued to Acceris 300,000 shares of Series B Convertible Preferred Stock. This preferred stock was converted to 1,500,000 common shares in March 2004 pursuant to an agreement with Acceris that resolved the open account issues, allowed Acceris to sell 750,000 of the converted common shares to the same investors that purchased Buyers United common stock in March 2004, and granted to Acceris the right to include its common stock in any registration statement we file for the March investors.

On December 20, 2002, Buyers United entered into an agreement with Touch America, Inc., a subsidiary of Touch America Holdings, Inc., to purchase a substantial number of its switched voice telecommunication customers, including the carrier identification code used to service those customers. In June 2003, we amended the purchase agreement to acquire additional switched voice and dedicated telecommunications customers and correct discrepancies in the list of customers originally purchased in December 2002. Buyers United did not purchase any accounts receivable, equipment, or other assets of Touch America. The total purchase price was \$6.5 million. Buyers United made an initial payment of \$3 million to Touch America in December 2002 and has made additional cash payments totaling \$3.4 million through March 4, 2004. The balance of \$93,988 is expected to be paid in April 2004.

#### Services and products

Buyers United is an aggregator and provider of telecommunications services. As an aggregator we mean that we contract with a number of third party providers for the right to resell the various telecommunication services and products they provide, and then offer all of these various services to our customers. We are also a provider, in that we operate a dedicated VoIP Network and advanced customer contact handling/management software applications that enable us to offer enhanced services to our customers. The variety

of services and products we offer enables the customer to buy only those telecommunications services it needs from one source, combine those services in a customized package, receive one bill for those services, and make one call to Buyers United if a service problem or billing issue arises. The separate services Buyers United can sell singly or bundled to meet customer needs include:

- o Switched long distance service to business and residential customers. This is traditional 1+ long distance service. The customer dials the long-distance number and the local exchange carrier switches the call to the long distance provider we have designated for the customer

based on the customer's account selections. We bill the customer for the long distance service at the applicable retail rate, as well as local access fees for the local exchange carrier, taxes, and universal service fund charges.

- o Dedicated access long distance service. Some business customers require multiple line concurrent long distance access for high volume telemarketing or call center operations. Dedicated access connects the customer directly to the long distance carrier, by-passing the local exchange carrier, through a T-1 or higher capacity local loop connection. We bill the customer for the local loop connection and for the long distance service.

- o Toll-free 800/888/877/866 services. Toll free calling service allows clients of our customer to call into the customer at the customer's expense, rather than the client's expense. This is a service traditionally used by our business customers. We own and assign the toll free numbers to our customers and bill our customers for the toll free number and the long distance service.

- o Dedicated data transmission. This is similar to dedicated access long distance service, except the primary use is for data transmission, such as Internet access, and the local loop is connected to the Internet through one of our providers. We bill the customer for the local loop connection and for Internet access fees.

- o Private line data services. This type of services is provided through a T-1 or higher capacity circuit, and encompasses a variety of data transmission media, including Frame Relay, dedicated Internet access or Asynchronous Transfer Mode (ATM) data networks. Each of these data products rely on a shared network architecture where the bandwidth on the network backbone is shared by the users connected into these networks. Customers frequently select these types of networks because it is much more cost-effective than installing a private line network, or because of the need to access the public Internet.

- o Calling card services. The calling card feature is often provided with our switched and dedicated long distance services. The calling card allows the customer to use a toll free number and PIN to make long distance calls from any location on its account. We bill the customer for the long distance service.

- o Conference calling. This service allows a customer to interconnect simultaneously a number of callers for conference purposes. This feature is of particular value to business customers that have a need for multiple members of the organization to speak together from remote locations on a periodic basis. The customer is assigned a toll free number and PIN that allows each participant in the

conference call to access the call simply by dialing the toll free number and entering the PIN when prompted. We bill the customer for the conference call feature and the long distance minutes of each participant in the conference call.

- o Outbound dialing and voice message broadcasting. This is the ability to allow a customer to automatically dial outbound and to broadcast voice messages to predefined lists. Customers can pay by the call, by the minute or by the port. They can also link directly to their own database to automatically generate call lists with sophisticated call scheduling capabilities. They can also choose between autodial (one at a time), powerdial (dial sequentially through a list), or predictive dialers (computer algorithms with dial ahead to screen out busies, no answers, etc.).

- o Fax to Email. This service allows a customer to send or receive faxes through an Email address with the customer's personal computer.

- o Voice mail. This feature allows customers to receive, store, forward, and access voice mail messages.

- o Real time service account management on the Internet. Real time management allows the customer to redirect phone calls received during the day to the customer's location. For example, the customer can access its account through the Internet and direct that phone calls be forwarded to wherever the customer happens to be during the day - office, home, cellular phone, or other location. With its personal

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computer, the customer can review billing on its account, make service inquiries, or add or remove services, all over the Internet.

In addition, Buyers United offers a flexible set of advanced call center traffic handling/management applications, such as skills-based routing, automated call distribution, automated interactive voice response, database integration with the call handling technology, multimedia contact handling (voice, fax, email, chat), and management reporting features. These capabilities have previously been available only by purchasing and integrating expensive equipment at substantial installation expense, so only the large call center operations with 200 or more agents on call at any one time could afford to establish these capabilities. Buyers United can deliver the same capabilities through a software solution hosted on our VoIP Network at a much lower cost that makes it possible for the smaller traditional call center to make the transition to a full-featured contact center with improved agent productivity and the ability to respond quickly to customer requirements for voice, email, fax and/or chat contact methods.

The Buyers United inNetwork(TM) family of products is a set of pre-integrated application services hosted within our VoIP Network designed to meet the needs of call centers and other businesses that demand greater contact flexibility. Current products include inContact(TM), a complete set of advanced contact handling/contact management software applications (as referenced in the above paragraph), plus additional features for handling multi-media contact methods - voice plus email, fax or web chat. InControl(TM) is a rapid application development tool with a visual drag and drop programming interface for creating or modifying contact routing processes.

## Marketing strategy

By the end of 2001, Buyers United employed two distinct brands for our telecommunications services, "UCN" or "United Carrier Networks" for commercial and business customers, and "BOL" or "BuyersOnline" for residential customers. We are now focusing on promoting "UCN" or "United Carrier Networks" for all of our service offerings, so toward the end of 2003 we discontinued marketing to residential customers, and discontinued the BuyersOnline brand name. Our plan is to change our name to "UCN" or a similar variation in 2004.

We market our services primarily through independent sales agents. We engage independent telecommunications agents around the country who sell primarily to commercial and business customers. Independent agents are responsible for a substantial amount of annual U.S. telecommunication sales to commercial and business users. The service presentation we developed for UCN is targeted to the independent agent, and is intended to make available to the agent a coordinated package of services designed to be attractive to commercial and business customers. With UCN our marketing effort focuses on providing businesses with the ability to access multiple long distance carriers with which we have agreements to resell services, allowing the business owners to choose services provided through various long distance providers. A business customer can choose various services from any or all of the different telecommunications providers we use, yet only have to contract through UCN for the selected services. The business customer is not required to deal with these carriers separately. UCN provides a single source for customer service, regardless of how many networks the business uses, and sends a single billing statement that combines all of the services used from any combination of wholesale service providers.

We have been, and should continue to be, successful in engaging independent agents because our package of services appeals to commercial and business customers, and because of our back office support infrastructure, incentive programs, customer retention efforts, and additional product/service revenue opportunities. Buyers United earned the "2002 Agent's Choice Award" in March 2003 from the Agent Alliance, a national trade association of independent telecom agents. The award was given in recognition of the effectiveness of our customer service and support programs.

Buyers United's early growth came from the residential consumer long-distance market. We plan to continue providing our services to residential customers using the UCN brand. We do not intend, however, to pursue an active marketing effort in the residential market because we believe our resources are better used in pursuing business customers. We had a substantial increase in residential customers over the past year as a result of the Touch America transaction.

## Provisioning

Buyers United is a reseller of domestic and international long distance and other services provided by national and regional providers. Our primary providers are MCI, Qwest, Global Crossing, AT&T, Dancris, WilTel, and CNM.

Buyers United resells switched long distance minutes that it has contracted to obtain from our providers at wholesale rates that averaged 54.0 percent of the retail rates charged to customers in 2002 and 53.3 percent in 2003. In 2002 and 2003, retail rates were between \$0.02 and \$0.08 per minute for switched domestic long distance. International rates vary substantially on the basis of the country and number called, but we believe our rates are comparable to rates available from our competitors.

The contracts with our providers are standard and customary in the industry, requiring payment net 30 days for minutes used in a month and designate Buyers United as the point of contact for all customer service calls. These agreements are for one to three years and are generally renewable at the end of each contract term, when rates are often renegotiated on the basis of prevailing rates in the industry. We are responsible for all customer billing and collections, so that as far as the customer is concerned we are the long distance service provider. Qwest and Global Crossing accounted for approximately 80 percent of our cost of revenues in 2002 and 70 percent in 2003.

Buyers United also acquires its other services from its providers at rates or fees fixed in our contracts, which include dedicated long distance service, toll-free 800/888/877/866 services, dedicated data transmission service, and calling cards. These services are billed to us at rates or fees stated in our contracts with the providers and are payable on the same terms as switched long distance service.

We maintain a call center in Bluffdale, Utah for receiving customer service and billing inquiries. Presently we employ approximately 62 customer service personnel to respond to customer calls, and our call center specialists are available from 7:00 a.m. to 10:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. on Saturday. We also provide emergency service 24-hours a day, seven days a week. We place a high priority on customer service, since we believe that when our rates are similar to rates offered by our competitors, service is a primary factor in acquiring and retaining customers.

The VoIP Network enables our customers to use existing telephone, fax machine, pager, or modem equipment to achieve high-quality communications through Internet Protocol technology. The VoIP Network consists of a fully integrated dedicated network of equipment and leased telecommunications lines augmented by the licensed I-Link "softswitch" software. It provides the necessary operational platform for the enhanced services we began offering in the third quarter of 2003 and is adaptable for use with new or specialized service applications developed by others. The VoIP Network is a data packet-based network that ties together local loop dial-up and broadband connections via gateways located in New York, Salt Lake City, Dallas, and Los Angeles. Each of these gateways consists of off-the-shelf hardware elements and the softswitch software. The softswitch software can distinguish among and "handle" voice, fax, and modem communications as programmed for the customer's suite of service selections. Handle means the voice or data transmission can be delivered directly, redirected (to a different location), redistributed (to a different or multiple recipients), stored for later delivery, or altered (such as converting a fax to email).

The VoIP Network allows us to provide cost advantages over traditional transmission networks with respect to both lower transmission cost and lower capital infrastructure cost. Lower transmission cost results from transmitting long distance traffic over the network between our gateways for retransmission, which has greater capacity because transmissions are converted to data packets and transmitted concurrently over the network bandwidth capacity. Access and transmission costs for our VoIP network are less than traditional transmission networks. The second component of cost advantages is lower capital infrastructure costs. In a traditional telecommunications network, each service -- voicemail, fax mail, conference calling, and single number forwarding -- must be

processed through one or more separate hardware switches. We offer all of these services through the VoIP Network as modified or as new software applications are added to the network software platform, which is less expensive than purchasing and maintaining hardware switches. It is this ability to host different software applications on the VoIP Network to configure the software to deliver different connectivity solutions that enables us to offer the inNetwork(TM) family of products to call centers and other businesses that demand greater contact flexibility.

We began integrating this network with our traditional provider network systems and service offerings in the first quarter of 2003 and completed the process in the third quarter of 2003. While we believe the VoIP Network will lower our costs of operation in 2004 and generate internal growth from enhanced service products, we cannot predict whether these lower costs or growth will be significant.

## Technology and our business

Buyers United has always leveraged information technology to create consistent streamlined business processes. Buyers United relies on the following systems, which represent its current technology initiatives:

- o Automatic customer call distribution. This system is a unified solution for managing customer communications that integrates telephone, email, fax, web text chat, and co-browsing into a unified interface. The distribution system enables Buyers United to enhance customer relationships, reduce costs, and improve the management of all types of business communications.

- o BuyersUnitedDashboard (BUD) is a customer service software application that provides a single interface for call center representatives to perform their service tasks. BUD utilizes a "wizard" interface methodology that simplifies the customer service representatives' daily tasks by breaking them into smaller steps. The "wizard" framework provides increased quality and consistency into our customer service model.

- o CostGuard(R), is a fully convergent, open and flexible billing system designed to facilitate collaboration among customer service representatives, business affiliates, and customers. Customers can access the system through a standard web-browser to initiate and fulfill billing and service tasks. Buyers United believes the CostGuard system provides a consistent and flexible billing solution that supports our current needs and is expandable for future growth.

- o The VoIP Network employs an architecture emphasizing security, reliability, and carrier diversity. A "Security in Layers" approach has been adopted utilizing security enforcement points comprised of inspection firewalls, packet filters, and intrusion detection and prevention systems. Measures have been implemented to audit data integrity and access. Significant subsystems are geographically dispersed and data replicated between sites to protect against fiber optic disruption or other environmental event.

Full backups of all our core data are performed weekly. Differential backups are performed nightly. Transaction log backups take place every 30 minutes. Backups are copied to two file servers in different locations. We use SSL encryption to protect all sensitive areas of our customer information and service-oriented websites. Remote access to our systems is made possible through a 168 bit



encrypted Virtual Private Network. System passwords are changed on a periodic basis and stored in a secure folder with restricted access. All local desktops are scanned for viruses on a real-time basis and report to a central server. We believe our backup, maintenance, and security systems are adequate for preserving the delivery of service to our customers and operation of our business without significant outages or interruptions. However, an extraordinary unforeseen and catastrophic event is always possible that could have a significant impact on our business, and we do not have business interruption insurance on which we could recoup losses resulting from such an event.

## **Governmental Regulation**

**Federal Regulation of Telecommunications Services** Our telecommunications services are subject to federal regulation under the Telecommunications Act of 1996 (Telecom Act). The Telecom Act was designed to foster local exchange competition by establishing a framework to govern new competitive entry in local and long distance telecommunications services and allow any entity, including cable television companies and electric and gas utilities, to compete in the telecommunications market. The ongoing implementation and interpretation of the Telecom Act remains subject to numerous federal and state policy rulemaking proceedings and judicial review and we cannot predict any future impact on our business.

Pursuant to the Telecom Act, the Federal Communications Commission (FCC) regulates our interstate and international telecommunications services. The FCC imposes more extensive requirements on incumbent common carriers that have some degree of market power, such as the Regional Bell Operating Companies (RBOCs) and other independent local exchange carriers (ILECs), than it imposes on companies like ours, which are non-dominant interexchange carriers that lack market power. For example, the FCC permits non-dominant interexchange carriers to provide domestic interstate services without prior authorization.

As a non-dominant interexchange carrier, our costs of providing long distance services could be affected by changes in FCC rules controlling the form and amount of "access charges" local exchange carriers (which generally include the RBOCs and ILECs) are permitted to impose on connecting companies to originate and terminate long distance traffic over their local networks. The FCC currently has several rulemaking proceedings in which it is considering changes to the existing interstate access charge system. It has also recently been reported that the nation's largest local exchange and long distance providers, who have been engaged in private negotiations for several months, have tentatively reached an agreement on a proposal that would eliminate or substantially reduce interstate local access charges. If such an agreement is reached, it would have to be presented to and approved by the FCC.

We cannot predict the outcome of these or other federal or state access charge proceedings or whether they will have a material impact on us. It is even more difficult to predict the outcome and impact of private negotiations in which we are not directly involved. It is recognized, however, that the access charge payments Buyers United must pay to the RBOCs and ILECs are a material part of its cost to provide services over its network.

The Telecom Act requires that every telecommunications carrier contribute, on an equitable and non-discriminatory basis, to federal universal service mechanisms established by the FCC. The federal Universal Service Fund (USF) provides subsidies to defray the

costs of telephony services in high-cost areas for low-income consumers and helps subsidize telecommunications and Internet services for qualified schools, libraries and rural health care providers. Our payments to the federal USF are based on a percentage of our interstate and international retail telecommunications revenues and the contribution factor issued by the FCC, which varies quarterly. In 2003, the quarterly USF contribution factor averaged around nine percent of billed retail revenue. The amounts contributed may be passed through to customers.

The FCC currently has an open rulemaking proceeding in which it is considering converting the current revenue-based USF contribution system to a "connection-based" system with a fixed, monthly fee. It is too soon to predict whether the transition to a connection-based USF contribution system would have a financial impact on us.

**State Regulation of Telecommunications Services** State regulatory agencies have jurisdiction when our telecommunications services are provided on an intrastate basis. The state regulatory environment varies substantially from state-to-state and in some cases can be more extensive than FCC regulations. In most instances, we are required to obtain and maintain certification from a state public utility commission (PUC) before providing telecommunications services in that state. Consequently, we are subject to the obligations that the applicable state laws place on all similarly certified carriers, including the regulation of services, payment of regulatory fees, and preparation and submission of reports. If state regulators or legislators change current regulations or laws it may negatively impact our ability to provide services.

**Regulation of Internet Telephony and the Internet** The use of the Internet and private Internet Protocol (IP) networks to provide voice communications services is a relatively recent market development. Although the provision of such services is currently permitted by United States law and remains largely unregulated within the United States, several FCC and state regulatory proceedings aimed at evaluating the future regulatory treatment of such services have recently been initiated. More aggressive regulation of the Internet in general, and Internet telephony providers and services specifically, may materially affect our business, financial condition, operating results and future prospects, particularly if increased numbers of governments impose regulations restricting the use and sale of IP telephony services.

#### Federal

To date the FCC has reached no conclusion on whether IP telephony services constitute telecommunications services subject to regulation under the Telecom Act. The FCC is now examining the question whether certain forms of phone-to-phone Internet telephony are information services or telecommunications services. Recent actions taken by the FCC and proceedings now pending before the FCC may affect the regulatory status of Internet telephony.

o In February 2004 the FCC ruled that computer-to-computer IP telephony that transmits data packets carrying voice communications via the same lines that carry e-mail and instant messages is an unregulated "information service" that is subject to exclusive federal jurisdiction. Accordingly, this type of computer-to-computer IP telephony service is likely to remain free of traditional telephony regulation.

- o Also in February 2004 the FCC adopted a broad Notice of Proposed Rulemaking seeking comment on the appropriate regulatory classification and treatment of Internet-based communications services, most notably Voice over IP (VoIP).
- o In October 2002 AT&T filed a petition with the FCC seeking a declaratory ruling that would prevent RBOCs and other ILECs from imposing traditional circuit-switched access charges on phone-to-phone IP services.
- o In September 2003 Vonage Holdings Corporation filed a petition for declaratory ruling requesting that the FCC find an order of the Minnesota Public Utilities Commission requiring Vonage Holdings to comply with state laws governing providers of traditional telephone service to be preempted because its broadband Internet telephony service is an information service.
- o In January 2004, Level 3 Communications, LLC filed a "forbearance petition" with the FCC asking the agency to reaffirm that legacy switched access charges do not apply to VoIP.

We cannot predict either the timeframe or outcome of the foregoing open proceedings before the FCC or what regulations, if any, the FCC will impose on providers of IP-enabled voice communications services as a result of these proceedings.

#### State

State governments and their regulatory authorities may assert jurisdiction over the provision of intra-state IP-enabled communications services where they believe that their telecommunications regulations are broad enough to cover regulation of such services. Of primary concern to the IP-enabled communications providers is that the imposition of state regulation would result in the provider being subject to local access charges for intra-state service, which would significantly increase the cost of service. While a majority of state commissions have not imposed traditional telecommunications regulatory requirements on IP telephony at this time, a number of state regulatory authorities have initiated proceedings to examine the regulatory status of Internet telephony services.

In October 2003 a Federal court in Minnesota issued a permanent injunction against the Minnesota public utilities commission to prevent it from imposing state regulations on a provider's VoIP services offered over broadband connections. This permanent injunction was recently upheld in the face of multiple challenges. Prior to the Minnesota Federal court ruling, several states, including California, Washington, Wisconsin and Florida issued directives to various VoIP providers directing them to register as telecommunications providers. There can be no assurance that these states will respect the Minnesota Federal court ruling or accept the position asserted by VoIP providers that they are information, as opposed to telecommunications, service providers.

#### Internet Taxation.

In addition to regulations addressing Internet telephony and broadband services, other issues relating to the Internet in general could affect our ability to provide our services. Federal, state and local governmental organizations are considering various legislative proposals that might impose additional taxes on Internet services and products. We cannot predict whether new taxes will be imposed on our IP-enabled communications services or the Internet in general and, depending on the type of taxes imposed, whether and how our services would be affected thereafter. Increased taxation of the Internet may decrease its growth and hinder technological development, which may negatively impact the cost of doing business via the Internet or otherwise materially adversely affect our business, financial condition and results of operations.

## **Competition**

Presently we are an aggregator and reseller of long distance and related telecommunications services. Many of our competitors are substantially larger with greater financial and other resources.

The U.S. long distance telecommunications industry is highly competitive and significantly influenced by the marketing and pricing practices of the major industry participants such as AT&T, Sprint and MCI. Buyers United also competes with other national and regional long distance carriers that employ various means to attract new subscribers, including television and other advertising campaigns, telemarketing programs, network marketing, cash payments, and other incentives. The ability of Buyers United to compete effectively will depend on its ability to provide quality services at competitive prices.

Buyers United competes on the basis of variety of services offered, customer billing and service, and price. Since we can access and offer switched long distance rates from a number of providers, customers can select the rate plan best suited to their needs without having to shop each long distance carrier separately. We offer to our customers, directly and through agents, a wide selection of telecommunications products. This provides the customer a one-stop shopping opportunity to obtain many of its telecommunication services from one source, Buyers United. We believe customers are attracted by the fact that Buyers United provides many of their services because they receive one bill and have only one provider to call with any billing or service questions. We further believe this aggregated service approach enables us to attract agents to sell our services. By selling Buyers United services, agents no longer have the burden of managing multiple contracts with many telecommunications companies. Our agents can complete a sale at the customer site and count on accurate commissions for even complicated product suites. Additionally, agents enjoy dedicated customer service. We believe customers see positive differences in the way our services are sold and served compared to other providers. With Buyers United, customers are not forced to take bundled services or enter into long-term contracts from one provider, which we believe are typical sales practices of competitors. Because our customer contracts are based on user requirements rather than bundled services, Buyers United delivers only the requested services at an appropriate capacity and competitive price.

Building recognition of our brands is beneficial to attracting additional customers and new strategic alliances. Our failure to promote and maintain our brands successfully may result in slower growth, loss of customers, and loss of market share and strategic alliances. Accordingly, we intend to continue pursuing an aggressive brand-enhancement strategy, which includes promotional programs and public relations activities.

## **Employees**

As of December 31, 2003, Buyers United employed a total of 167 full time and 28 part time persons. None of our employees is represented by a labor union. We have not experienced any work stoppages and believe relations with our employees are good.

Risk associated with our business

Our revenues and operating results may be negatively impacted by the pricing decisions of our competitors and our providers.

Our revenues from period to period depend on the pricing for long distance service we can obtain from the wholesale providers of these services. We also must price our services at levels that are competitive in the marketplace. This industry has a history of downward pressure on long distance service rates as a result of competition among providers. To acquire and retain customers we offer these services at prices that are perceived as competitive in conjunction with the other benefits we provide. Consequently, falling prices will likely result in lowering our rates to customers, which will reduce revenues. On the other hand, higher prices charged by our providers will cut into gross profit margins unless we raise prices to our customers, which may be difficult for us to do if our competitors are not subject to the same upward pricing pressures or chose not to increase prices notwithstanding such pressure. To make up for potential reductions in either revenues or profits, it would be necessary for us to continue to make significant increases in our customer base from period to period, and there is no assurance that that we will be successful in doing so.

Our substantial debt adversely affects our operations and financial condition.

At December 31, 2003 borrowings and capital lease obligations totaled approximately \$11.9 million, which includes \$3.5 million of notes payable to certain of our directors that pay interest at 12 percent per annum, \$4.2 million of obligations related to the purchase or acquisition of customer accounts, and \$4.1 million of borrowings under our line of credit. A substantial amount of our cash flow from operations is used to service our debt rather than to promote and expand our business, which adversely affects results of operations. In March 2004, we completed a \$8.7 million private equity investment in Buyers United and will use approximately \$3 million for reduction of debt. Nevertheless, we expect that servicing the remaining debt through the end of 2004 will continue to be a use of free cash flow that could be used to develop our business.

Disruptions in the operation of our technology could adversely affect our operations.

We are dependent on our computer databases, billing and account computer programs, Internet protocol network, and computer hardware that houses these systems to effectively operate our business and market our services. Our customers and providers may become dissatisfied by any system failures that interrupt our ability to provide our service to them. Substantial or repeated system failures would significantly reduce the attractiveness of our services. Significant disruption in the operation of these systems would adversely affect our business and results of operations.

Our enhanced services are dependent on leased telecommunications lines, and a significant disruption or change in these services could adversely affect our business.

The enhanced services we offer, such as automatic call distribution, fax to email, real time account management, and the inNetwork(TM) family of products, are provided to customers through a dedicated network of equipment we own connected through leased telecommunications lines with capacity dedicated to us that is based on Internet protocol, which means the communication initiated by the customer is converted to data packs that are transmitted through the dedicated network and managed by our software

that resides on our equipment attached to the network. We also move a portion of our voice long distance service over this dedicated network, because it lowers our cost of providing the service from the cost of using traditional transmission methods.

We lease telecommunication lines and space at co-location facilities for our equipment, which represents the backbone of our dedicated network, from third party suppliers. If any of these suppliers is unable or unwilling to provide or expand their current levels of service to us that enable us to serve our customers, the services we offer would be adversely affected. Although we believe leased telecommunications lines and co-location facilities are available from alternative suppliers, we might not be able to obtain substitute services from other providers at reasonable or comparable prices or in a timely fashion. Any resulting disruptions in the services we offer that are provided over our dedicated network would likely result in customer dissatisfaction and adversely affect our operations. Furthermore, pricing increases by any of the suppliers we rely on for the dedicated network could adversely affect our results of operations if we are unable to pass pricing increases through to our customers.

Our business could be materially harmed if our computer systems were damaged.

Substantially all of our dedicated network systems are located at four locations in Los Angeles, Salt Lake City, Dallas, and New York. Our customer service, billing, and service management systems are located at our offices in Bluffdale and Draper, Utah. Fires, floods, earthquakes, power losses, telecommunications failures, break-ins and similar events could damage these systems. Computer viruses, electronic break-ins, human error, or other similar disruptive problems could also adversely affect our systems. We do not carry business interruption insurance. Accordingly, any significant systems disruption could have a material adverse effect on our business, financial condition, and results of operations.

We use the Internet in various aspects of our business. The viability of the Internet as an information medium and commercial marketplace will depend in large part upon the stability and maintenance of the infrastructure for providing Internet access and carrying Internet traffic.

Historically we have relied on the Internet for customer service and billing. Failure to develop a reliable network system or timely development and acceptance of complementary products, such as high-speed access systems, could materially harm our business. In addition, the Internet could lose its viability due to delays in the development or adoption of new standards and protocols required to handle increased levels of Internet activity or due to increased government regulation. If the Internet does not remain a viable conduit for data and transactional traffic or the manner in which it now operates changes significantly, then our business and results of operations could be adversely affected.

A fundamental requirement for online communications is the secure transmission of confidential information over public networks. Our failure to protect this confidential information could result in liability.

If third parties succeed in penetrating our network security or otherwise misappropriate our customer information, we could be subject to liability. Our liability could include claims for unauthorized purchases with credit card or banking information, impersonation or other similar fraud claims, as well as for

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other misuses of personal information, including for unauthorized marketing purposes. These claims could result in litigation and adverse publicity, which could have a material adverse effect on our reputation, business, and results of operations.

Our growth and results of operations are not predictable, which means an investment in us has greater risk.

Buyers United experienced significant growth in 2003, primarily through internal growth and the purchase of customer accounts. Recent acquisitions of assets and customers have substantially increased our operations. We have no other customer base acquisitions under consideration and cannot predict if or when another such acquisition opportunity may present itself. Consequently, it is not possible to predict with any certainty the growth of our business over the next year, whether internally or through acquisitions. Our ability to continue our growth and profitability will depend on a number of factors, including our ability to maintain and expand our independent agent network, the availability of capital to fund purchases of customers or acquisitions, existing and emerging competition, and our ability to maintain sufficient profit margins despite pricing pressures. Furthermore, the growth and development of our business may be harmed if we are unable to adapt and expand our systems, procedures, and controls to support and manage our growth. All of these factors indicate there could be fluctuations in our results of operations and volatility in our stock price that could expose an investor to greater risk.

Our inability to promote our name and service could adversely affect the development of our business.

Building recognition of our brand name, "UCN", is beneficial to attracting additional customers, obtaining favorable reseller agreements with providers of long distance, and establishing strategic relationships with independent agents and businesses that can facilitate or enhance our service offerings and marketing efforts. In January 2004 we filed an application with the U.S. Patent and Trademark Office to register the mark, but have yet to receive any response on the application. If we fail to obtain registration of UCN, we may consider adopting new marks for promotion, so we would gain little from promoting UCN. Even if we are successful in registering the mark, our failure to promote and maintain our brand name successfully may result in slowed growth, loss of customers, loss of market share, and loss of strategic relationships. We cannot assure you that we will be able to promote our brand names as fully as we would like, or that promoting our brand name will enable us to be competitive or improve our results of operations.

Our development of enhanced services could subject us to claims of patent infringement that would adversely affect our results of operations.

We offer enhanced services through our dedicated network, such as fax to email. This, and other enhanced services, has been the subject of claims by certain patent holders that providing the enhanced services violates existing patent rights covering the manner and method by which the services are performed. We have not received any notice or claim from any party that any service we offer violates any such rights. Should we receive such a notice, we expect that the patent holder would seek a licensing arrangement in which we would be required to pay a license fee to continue to offer the service, and may seek license payment for past sales of the service using the alleged patented technology. Payment of any such license fees would have an adverse impact on the net revenue generated from sales of the enhanced services.

Regulation of IP telephony services is unclear, so the imposition of significant regulation in the future could adversely affect our operations.

We deliver our enhanced services and move other long distance service through our VoIP Network. At both the Federal and state level, proceedings and investigations are pending with respect to whether IP-enabled voice communications are telecommunications services subject to Federal and state regulation. A determination that such services are subject to regulation would likely increase the cost of services we provide, which would adversely affect our results of operations. Even if a determination is made that our IP delivered services are not subject to current regulation, there is no assurance that Federal or state governments will not impose regulation on IP-enabled communications in the future that would add substantially to our costs of doing business.

Future sales or the potential for sale of a substantial number of shares of our common stock could cause the trading price of our common stock to decline and could impair our ability to raise capital through subsequent equity offerings.

As of March 15, 2004, we have 12,994,079 shares of common stock outstanding, of which 4,608,739 shares are freely tradable, 3,044,794 shares may be sold subject to the volume, timing, and other conditions of Rule 144 adopted under the Securities Act of 1933, 808,546 shares may be sold subject to the volume, timing, and other conditions of Rule 144 beginning May 1, 2004 and the remaining 4,532,000 shares may be sold subject to the volume, timing, and other conditions of Rule 144 beginning March 15, 2005. We agreed with the holders of 5,340,546 restricted shares to file a registration statement with the Securities and Exchange Commission in April 2004 for the purpose of registering resale of their shares.

In addition, we have outstanding warrants, options and convertible notes to acquire 7,646,583 additional shares that are registered for sale by the holders in the public market under a registration statement filed with the Securities and Exchange Commission in September 2003, which has been temporarily suspended until we file an amendment updating the registration statement with our financial statements for 2003 and other information. Assuming all these warrants and options are exercised, there would be 20,640,662 shares of common stock issued and outstanding. We have also reserved for future issuance 6,258,922 additional shares of common stock as follows:

- o 3,929,000 shares issuable on conversion of outstanding preferred stock;
- o Up to 2,006,351 shares underlying other warrants and options that were granted and remained outstanding as of the date of this filing;
- o Up to 173,571 shares reserved for issuance under our stock plans; and
- o Up to 150,000 shares reserved for issuance on conversion of outstanding notes.

Of the 3,929,000 shares of common stock issuable on conversion of outstanding preferred stock, 3,374,000 may be sold without limitation under Rule 144(k).



Sales of a substantial number of shares of our common stock in the public markets, or the perception that these sales may occur, could cause the market price of our stock to decline, which could adversely affect an investment in our stock and could materially impair our ability to raise capital through the sale of additional equity securities. The holders of these outstanding warrants, options, and convertible securities have the opportunity to profit from a rise in the value or market price of our common stock and to exercise purchase or conversion rights when we could obtain equity capital on more favorable terms than those contained in these securities.

## **ITEM 2. DESCRIPTION OF PROPERTIES**

Buyers United leases executive office space in Bluffdale, Utah, a suburb of Salt Lake City. The offices consist of approximately 30,000 square feet. The current monthly lease rate is \$32,307. The lease for office space expires in January 2007, but we have an option to renew the lease for an additional three to five years.

Through November 2004, Buyers United is leasing 14,339 square feet of space at 13751 S. Wadsworth Park Drive, Draper, Utah, at a monthly cost of \$16,728.

Buyers United believes that the office space included in both facilities is adequate for its anticipated needs for at least the next 15 months.

## **ITEM 3. LEGAL PROCEEDINGS**

In June 2001, Buyers United entered into a joint sales agreement with Infotopia, Inc., a direct response marketer. In connection with the agreement, Infotopia loaned \$500,000 to Buyers United. Subsequent to entering into the sales agreement, the two companies decided not to pursue further any joint activity. In December 2001, Buyers United negotiated a settlement of the \$500,000 loan in which Buyers United paid \$120,000 and issued 35,000 shares of common stock in exchange for canceling the outstanding obligation plus \$25,921 in accrued interest. The stock had a fair market value of \$22,401. Accordingly, based on these amounts, we recorded a gain on the early extinguishments of the debt in the amount of \$383,520. However, unbeknownst to us, during 2001 Infotopia allegedly entered into a General Security Agreement with Sea Spray

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Holdings, Ltd., which purportedly included the loan obligation. Sea Spray asserted that it had a perfected security interest in the obligation and demanded payment as successor-in-interest to Infotopia. We denied the claim and filed an arbitration proceeding to resolve the issue. Sea Spray attempted to pursue its claim in New York state court, which we removed to federal court in New York, and the federal court dismissed the action pursuant to an order to the effect Sea Spray must pursue its claims in the arbitration proceeding. An arbitration hearing was held in December 2003, at which Sea Spray failed to make any appearance or submission after receiving all required notice. The arbitrator entered a default in favor of Buyers United and its award further found in favor of Buyers

United as a matter of the evidence presented and as a matter of law. In our view this matter has been resolved fully in our favor and we have no obligation or liability to Sea Spray.

Buyers United is the subject of certain other legal matters, which it considers incidental to its business activities. It is the opinion of management, after discussion with legal counsel, that the ultimate disposition of these other matters will not have a material impact on the financial position, liquidity or results of operations of Buyers United.

#### **ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

No matter was submitted to a vote of security holders during the quarter ended December 31, 2003.

### **PART II**

#### **ITEM 5. MARKET FOR COMMON EQUITY AND RELATED STOCKHOLDER MATTERS; RECENT SALES OF UNREGISTERED SECURITIES**

Market price and stockholder matters

The common stock of Buyers United trades in the over-the-counter market. The following table sets forth for the respective periods indicated the prices of the common stock in the over-the-counter market, as reported and summarized on the OTC Bulletin Board. Such prices are based on inter-dealer bid and ask prices, without markup, markdown, commissions, or adjustments and may not represent actual transactions.

Calendar Quarter Ended:	High Bid (\$)	Low Bid (\$)
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March 31, 2002	1.30	0.61
June 30, 2002	2.00	1.10
September 30, 2002	1.93	1.30
December 31, 2002	2.00	1.25
Calendar Quarter Ended:	High Bid (\$)	Low Bid (\$)
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March 31, 2003	2.45	1.52
June 30, 2003	2.22	1.20
September 30, 2003	2.95	1.71
December 31, 2003	3.05	2.00

Since inception, no dividends have been paid on the common stock. Buyers United intends to retain any earnings for use in its business activities, so it is not expected that any dividends on the common stock will be declared and paid in the foreseeable future. As of March 15, 2004, there were outstanding 1,827,500 shares of Series A Convertible Preferred Stock and 420,300 shares of Series B Convertible Preferred Stock. Under the terms of this preferred stock, Buyers United cannot make any distributions on its common stock without the approval of a majority of the preferred stockholders. At March 15, 2004, there were approximately 4,250 holders of record of the common stock.

#### Repurchases of common stock

In December 2003, a holder of 100,000 shares of Series B Convertible Preferred Stock converted all of those shares to 500,000 shares of common stock. In January 2004, the holder sold those common shares plus 14,560 additional shares, or a total of 514,560 shares, to Buyers United for \$500,000 in a privately negotiated transaction.

## **ITEM 6. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

### **Overview**

Buyers United is a domestic telecommunications company that offers and sells a wide range of long distance and related communication services to business and residential customers. In the past we functioned as an aggregator and reseller of telecommunications services provided by others. We intend to continue to pursue and develop this type of business. However, in December 2002 Buyers United entered into agreements to purchase and manage assets of Acceris Communications Inc. (formerly I-Link, Inc.) and its subsidiary, I-Link Communications, Inc., and license in perpetuity software developed by I-Link for the operation of a Voice over Internet Protocol communications network (VoIP Network). We closed the transactions in May 2003. With these newly acquired assets we can now develop and offer as a provider enhanced services, such as fax to email, and transmit data and other communication services for a portion of the journey over our VoIP Network rather than entirely through third party providers. In October 2003, Buyers United acquired the exclusive right to sell and manage the enhanced telecommunications functions of MyACD, Inc. with a one-year option to purchase it at a price of approximately \$6.8 million. With the MyACD technology we can offer a new product approach that combines our national VoIP Network with on-demand proprietary telephony software for contact handling/management applications. We are changing the way mission critical applications are delivered and priced for the contact

center marketplace, or for any business or department seeking to improve how it manages the productivity and quality of its customer contact opportunities.

In December 2002, Buyers United also entered into an agreement with Touch America, Inc., a subsidiary of Touch America Holdings, Inc., to purchase a substantial number of its switched voice telecommunication customers, including the carrier identification code used to service those customers. In June 2003, we amended the purchase agreement to acquire additional switched voice and dedicated telecommunications customers and correct discrepancies in the list of customers originally purchased in December 2002. The total purchase price was \$6.5 million. Buyers United made an initial payment of \$3.0 million to Touch America in December 2002 and has made additional cash payments totaling \$3.4 million through March 4, 2004. The balance of \$93,988 is expected to be paid in April 2004.

During August 2003, Buyers United purchased approximately 12,000 long distance customers from Glyphics Communications, Inc. for \$543,558.

Buyers United entered into an agreement to purchase 37 dedicated long distance customers from Source Communications, LLC for \$750,000 in February 2004. Closing of the acquisition was subject to complying with applicable federal and state regulation pertaining to transfer of the customers. All of the regulatory requirements were satisfied and the acquisition of the customers is completed

We generate internal growth by pursuing multiple marketing avenues, including using independent agents, marketing through the Internet, and selling through our direct sales force. We intend to expand and develop our direct sales force and value-added reseller programs during 2004. Our purchase of telecommunication customers of Touch America resulted in a significant increase in our customer base during 2003. We believe continuing financial difficulties and uncertainty in the telecommunications industry may result in opportunities to acquire customers from unrelated companies, such as our recent February 2004 purchase of dedicated long-distance customers from Source Communications, and we intend to remain open to these opportunities. However, at the present we are not evaluating any new acquisitions.

#### Results of operations

#### **Revenues**

For the year ended December 31, 2003 revenues increased to \$63.3 million, a 110 percent increase compared to revenues for the year ended December 31, 2002 of \$30.2 million. While a significant portion of the increase in revenue is due to the acquisition of customer accounts, we also generated growth internally from ongoing promotional efforts, primarily involving independent agents.

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For the year ended December 31, 2002, revenues increased 110 percent to \$30.2 million as compared to \$14.3 million for the year ended December 31, 2001. The change was due to a substantial increase in our customer base. These new customers were generated through independent sales agents and referrals from unrelated Internet marketing companies.

## **Costs of Revenues**

Costs of revenues for the year ended December 31, 2003 increased to \$34.6 million, a 112 percent increase as compared to \$16.3 million for the year ended December 31, 2002. As a percentage of revenue, costs increased to 54.6 percent in 2003 compared to 54.0 percent for same period in 2002. The decrease in gross margin for the year ended December 31, 2003 as compared to the previous year is the result of costs related to an increase in customers using dedicated circuit services. This type of service typically has lower profit margins, but higher volumes, than other types of long distance services. Also contributing to a lower gross margin was the combination of costs related to integration efforts involved in the I-Link acquisition and higher costs of Touch America customers. Buyers United agreed with Touch America on certain wholesale prices during a phase-in period after acquiring the customers. However, Buyers United immediately began switching new customers over to other lower-cost wholesale providers. The higher Touch America costs were offset slightly by a decrease in other costs for long-distance minutes.

Costs of revenues for the year ended December 31, 2002 were \$16.3 million, or 54 percent of revenue, as compared to costs of \$9.3 million, or 65 percent of revenue, for the year ended December 31, 2001. During 2002, Buyers United increased volume and new customer sign-ups with two of our largest long-distance wholesale carriers resulting in decreased rates for long-distance minutes and an increase in gross margin for the year.

### **General and administrative**

General and administrative costs for the year ended December 31, 2003 increased 101 percent to \$14.8 million compared to \$7.4 million for the year ended December 31, 2002. The increase in costs is due to expenses required to support Buyers United's significant revenue growth, and costs associated with the I-Link, Touch America and the MyACD transactions. To meet the needs of increased revenue levels we hired additional customer service and collection personnel. In addition, several employees of I-Link were retained by Buyers United in order to effectively maintain the VoIP Network, as well as provide customer support and billing services. Buyers United also assumed certain office lease obligations of I-Link, which resulted in additional occupancy expenses.

General and administrative expenses for the year ended December 31, 2002 increased 20 percent to \$7.4 million or 24 percent of revenue as compared to \$6.1 million or 43 percent of revenue for the year ended December 31, 2001. The increase resulted from increases in bad debt expense, customer service and support expenses and billing costs, all incidental to the increase in revenue. These increases were offset by decreased costs of maintenance and depreciation expense from the termination of high-cost equipment leases and the write-off of obsolete web-site development costs during 2001.

### **Selling and promotion**

Selling and promotion expenses increased 133 percent to \$10.8 million or 17 percent of revenue for the year ended December 31, 2003 compared to \$4.6 million or 15 percent of revenue for the year ended December 31, 2002. The increase resulted from higher commissions paid on increased revenue. Selling and promotion costs for 2003 include higher amortization expenses associated with the customer lists acquired during 2003.

Selling and promotion expenses for the year ended December 31, 2002 were \$4.6 million or 15 percent of revenue, an increase of 40 percent over the prior year's expenses of \$3.3 million or 23 percent of revenue. The increase was the result of higher expenses for sales commissions, sales support staff, and the amortization of deferred customer referral fees. These increases were directly related to the increase in revenue during the 2002 year.

#### Other income (expense)

Interest expense for the year ended December 31, 2003 was \$1.9 million compared to \$1.5 million for the comparative period in 2002. The increase in interest expense was the result of higher debt balances outstanding throughout 2003 compared to 2002.

Interest expense for 2002 was \$1.5 million as compared to \$997,882 for 2001, an increase of 55 percent. The increase is attributable to the significant amount of additional debt financing Buyers United had outstanding throughout 2002, which we raised to fund operations and an online marketing opportunity with an unrelated Internet marketing company.

#### Liquidity and capital resources

Buyers United's current ratio as of December 31, 2003 increased slightly to 0.52:1 from 0.51:1 at December 31, 2002. The components of current assets and current liabilities that changed significantly since the end of 2002 were cash, accounts receivable, line of credit, the current portion of long-term debt, and accrued liabilities.

The increase in cash and the line of credit was the result of a significant draw against the line of credit that took place during the last week of December 2003. Accounts receivable, accrued commission and rebates, accrued liabilities, and accounts payable all increased as a result of higher revenues reported during 2003 as compared to the same period in 2002. Accrued dividends increased as a result of the additional shares of preferred stock issued to I-Link, Inc. in connection with completing the acquisition of the VoIP Network.

The current portion of long-term debt increased \$1.7 million or 28 percent, due to several long-term notes maturing and becoming due and payable in 2004. The long-term portion of notes payable decreased by \$3.2 million due to the net effect of the following items:

- o Ongoing payments on acquisition notes.
- o The partial payoff and replacement of a \$1.1 million promissory note, previously due February 28, 2003. Buyers United retired the note payable by paying \$250,000 in cash and issuing a new promissory note for \$800,000. In addition, Buyers United issued 50,000 shares of common stock in connection with the original agreement. The new note is unsecured and bears interest at ten percent, payable monthly. Principal is also payable monthly based on 20 percent of billings during each monthly billing period from designated customers.

- o In January and February 2003, Buyers United received \$500,000 from the issuance of promissory notes payable, \$400,000 of which came from three Directors of Buyers United. The unsecured notes bear interest at 12 percent and are due in 2004 through early 2005.
- o In May and June 2003, Buyers United received \$500,000 from the issuance of promissory notes payable. The notes are secured by computer and telecommunications equipment, bear interest at 12 percent, and are due in May and June 2006.
- o During June 2003, the Company initiated a program to repurchase outstanding common stock from shareholders of record with total holdings of 100 or fewer shares. The offering price per share was \$1.75. The program ended in September 2003 after the Company had repurchased 2,774 shares.
- o In June 2003 Buyers United issued \$1.4 million in promissory notes for cash used primarily for purchasing customers from Touch America. The notes are unsecured and bear interest at ten percent, with principal and interest payable monthly. The principal paid each month equals approximately 20 percent of billings collected during each monthly billing period from the acquired Touch America customers. After all principal is repaid, note holders will continue to receive approximately ten percent of such collected billings. There was a five percent commission paid to the sales agent in connection with the issuance of the notes.

Buyers United has a line of credit agreement with RFC Capital Corporation that expires in January 2006. The available borrowing limit is \$5.0 million. Interest accrues at prime plus three percent, which was 7.00 percent as of December 31, 2003. During 2002, the interest rate on the line was prime plus six percent, which was 10.25 percent as of December 31, 2002. The facility allows the Company to obtain financing on its eligible accounts receivable, including unbilled receivables and regular monthly billings. The facility is collateralized by the underlying receivables. On December 31, 2003, Buyers United had financed the maximum amount available based on eligible accounts receivable at that time. This amount, less draws by RFC applied against the

outstanding amount, aggregated \$4.1 million. The facility requires Buyers United to maintain a restricted cash account for the collection of the receivables. As of December 31, 2003, Buyers United had \$1.2 million of restricted cash associated with the RFC arrangement.

On September 10, 2003, Buyers United filed a registration statement on Form SB-2 with the Securities and Exchange Commission to register for resale up to approximately 8.8 million shares of common stock underlying outstanding warrants, options and convertible debt. During 2003, investors exercised warrants to purchase 522,500 shares of common stock providing cash to the Company of approximately \$1.0 million. In March 2004 the registration statement was temporarily suspended until the Company can file an amendment updating the registration statement with its 2003 audited financial statements and other information.

On March 15, 2004, Buyers United sold 3,782,000 shares of common stock at \$2.30 per share, or a total of approximately \$8.7 million. Net proceeds of the offering after placement fees and expenses are approximately \$8.1 million. The net proceeds of the private placement are intended to be used for various corporate purposes, including sales and marketing related programs, funding further development of our VoIP Network, reducing debt, and for working capital and other general corporate purposes.

The following table sets forth our capitalization as of December 31, 2003, and as adjusted to give effect to:

- o Receipt of the estimated net proceeds from our private placement of 3,782,000 shares of common stock at \$2.30 per share; and
- o Conversion of 300,000 shares of Series B Convertible Preferred Stock by Acceris Communications, Inc.

	December 31, 2003 -----	As Adjusted (1) -----
Stockholders' equity (deficit):		
Preferred stock, \$0.0001 par value; 15,000,000 shares authorized		
Series A 8% cumulative preferred stock		
1,865,000 shares issued and outstanding (liquidation value of \$3,730,000)	\$ 187	\$ 187
Series B 8% cumulative preferred stock		
721,729 shares issued and outstanding (liquidation value of \$7,217,290); as adjusted, 421,729 shares issued and outstanding, (liquidation value of \$4,217,290)	72	42
Common stock, \$0.0001 par value, 100,000,000 shares authorized;		
7,604,584 shares issued and outstanding; as adjusted,		
12,886,584 shares issued and outstanding	760	1,288
Additional paid in capital	20,193,148	28,295,023
Warrants and options outstanding	3,928,110	3,928,110
Accumulated deficit	(25,749,527)	(25,749,527)
	-----	-----
Total stockholders' equity (deficit)	\$ (1,627,250)	\$ 6,475,123
	=====	=====

(1) The adjusted figures do not give effect to the issuance of up to 7,972,583 additional common shares on exercise or conversion of outstanding warrants, options, and convertible notes that are registered for sale by the holders under a registration statement filed with the Securities and Exchange Commission, up to 1,600,476 shares underlying other warrants and options, up to 150,000 shares reserved for issuance on conversion of other outstanding notes, or up to 3,973,645 shares issuable on conversion of outstanding preferred stock.



Revenue Recognition: Buyers United's revenue recognition policy with respect to reseller agreements is to record gross revenues and receivables from customers when Buyers United acts as principal in the transaction; takes title to the products or services; and has risks and rewards of ownership, such as risk of loss for collection, delivery, or returns. Revenues from sales of services are recognized upon providing the services to the customers.

Accounts Receivable and Allowance for Doubtful Accounts: Accounts receivable is comprised of amounts billed and billable to customers, net of an allowance for uncollectible amounts. The allowance for doubtful accounts is estimated by management and is based on specific information about customer accounts, past loss experience, and general economic conditions. An account is written off by management when deemed uncollectible, although collections efforts may continue.

Property and Equipment: Property and equipment are stated at cost. Major additions and improvements are capitalized, while minor repairs and maintenance costs are expensed when incurred. In accordance with Statement of Position 98-1, "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use," Buyers United capitalizes certain costs incurred for the development of internal use software. These costs include the costs associated with coding, software configuration, upgrades, and enhancements.

Advertising Costs: Buyers United advertises its services through traditional venues such as print media to the general public. Costs associated with these advertising efforts are expensed as incurred.

#### Forward-looking statements

The Private Securities Litigation Reform Act of 1985 provides a safe harbor for forward-looking statements made by Buyers United. All statements, other than statements of historical fact, which address activities, actions, goals, prospects, or new developments that Buyers United expects or anticipates will or may occur in the future, including such things as expansion and growth of its operations and other such matters are forward-looking statements. Any one or a combination of factors could materially affect Buyers United's operations and financial condition. These factors include the availability of capital, competitive pressures, success or failure of marketing programs, changes in pricing and availability of services and products offered to members, legal and regulatory initiatives affecting long distance service, and conditions in the capital markets. Forward-looking statements made by Buyers United are based on knowledge of its business and the environment in which it operates as of the date of this report. Because of the factors listed above, as well as other factors beyond its control, actual results may differ from those in the forward-looking statements.

## **ITEM 7. FINANCIAL STATEMENTS**

The financial statements of Buyers United appear at the end of this report beginning with the Index to Financial Statements on page F-1.

## **ITEM 8. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

Effective February 2002, Buyers United changed its accountants from Arthur Andersen LLP to Crowe Chizek LLC.

## **ITEM 8A. CONTROLS AND PROCEDURES**

With the participation of management, Buyers United's chief executive officer and chief financial officer evaluated its disclosure controls and procedures on March 17, 2004. Based on this evaluation, the chief executive officer and the chief financial officer concluded that the disclosure controls and procedures are effective in connection with Buyers United's filing of its annual report on Form 10-KSB for the year ended December 31, 2003.

Subsequent to March 17, 2004, through the date of this filing of Form 10-KSB for the year ended December 31, 2003, there have been no significant changes in Buyers United's internal controls or in other factors that could significantly affect these controls, including any significant deficiencies or material weaknesses of internal controls that would require corrective action.

## **PART III**

### **ITEM 9. DIRECTORS, EXECUTIVE OFFICERS, PROMOTERS AND CONTROL PERSONS; COMPLIANCE WITH SECTION 16(A) OF THE EXCHANGE ACT**

#### **Directors and Officers**

The following table sets forth the names, ages, and positions with Buyers United for each of the directors and officers.

Name	Age	Positions	Since
Theodore Stern	74	Chairman of the Board, Chief Executive Officer and Director	1999
Gary Smith	69	Director	1999
Edward Dallin Bagley	65	Director	1999
Steve Barnett	62	Director	2000
Paul Jarman	34	President and Director	1997

David R. Grow	47	Chief Financial Officer	2003
G. Douglas Smith	34	Executive Vice President	1997
Kenneth D. Krogue	38	Executive Vice President	1997

All directors hold office until the next annual meeting of stockholders and until their successors are elected and qualify. Officers serve at the discretion of our Board. The following is information on the business experience of each director and officer.

Theodore Stern became a director of Buyers United in June 1999 and subsequently the Chief Executive Officer in September 2000. Mr. Stern has served as a director of Northern Power Systems of Waitsfield, Vermont, a manufacturer of renewable generation systems, since September 1998. During the last five years Mr. Stern has been self-employed as a consultant to manufacturing companies.

Gary Smith became a director of Buyers United in June 1999. During the past five years he has been self-employed as a business consultant.

Edward Dallin Bagley became a director of Buyers United in June 1999. He has been self-employed as an attorney and investor for the past five years. During that time he has also served as a director of Tunex International, Inc., an automotive tune-up franchise company based in Salt Lake City, Utah, and Clear One Communications, Inc., a manufacturer of electronic products based in Salt Lake City, Utah.

Steve Barnett has been self-employed for the past five years as a consultant to manufacturing and distribution companies on improving operations and business restructuring. He has continued to purchase and manage privately-held manufacturing companies, as well as serving on the boards of non-owned private companies in connection with his consulting services. For over five years, Mr. Barnett has been a director of Chicago's Jewish Federation and Jewish United Fund, and a Vice Chairman of the Board of Directors since 1997. He is also a Director of Bank Leumi USA.

Paul Jarman has served as an officer of Buyers United during the past five years, first as an Executive Vice President and as President since December 2002.

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David R. Grow, a Certified Public Accountant, joined Buyers United in June 2003 and currently serves as its Chief Financial Officer. From January 2002 to June 2003, Mr. Grow served as the Chief Financial Officer and member of the Board of Directors of Spectrum Engineers, Inc., a mechanical and electrical engineering firm in Salt Lake City, Utah. From February 2000 to January 2002, he served as the Chief Financial Officer and member of the Board of Directors of webBASIS, Inc., a web-based software development company

in Bakersfield, California. During the two-year period prior to February 2000, he served as the Chief Financial Officer of Daw Technologies, Inc., a manufacturer and installer of cleanrooms for the semiconductor industry, based in Salt Lake City, Utah.

G. Douglas Smith has served as an Executive Vice President of Buyers United during the past five years.

Kenneth D. Krogue has served as an Executive Vice President of Buyers United during the past five years.

### **Board Meetings and Committees**

The Board met 13 times during the year ended December 31, 2003. All directors attended at least 75 percent of the meetings of the Board. During 2000, the Board formed the Compensation Committee, the members of which are Edward Dallin Bagley (Chairman), Steve Barnett, and Gary Smith. The Compensation Committee considers salary and benefit matters for the executive officers and key personnel of the Company. The Compensation Committee met five times in 2003, and all director members of the committee attended at least 75 percent of the meetings. In 2000, the Board also formed the Audit Committee, the members of which are Steve Barnett (Chairman) and Edward Dallin Bagley. The Audit Committee is responsible for financial reporting matters, internal controls, and compliance with the Company's financial policies, and meets with its auditors when appropriate. The Audit Committee met twice in 2003, and all director members of the committee attended the meetings. The Board has determined that Steve Barnett is serving as the audit committee financial expert within the meaning of Item 401(e) of Regulation S-B.

### **Board Compensation**

Each Director received a monthly director fee of \$1,000 during 2003. The past practice of the Board is to compensate directors for their annual service by issuing to each of them options to purchase 25,000 shares of common stock exercisable over a term of five years from the date of issue. Pursuant to this practice, each director received 25,000 options in March 2002 with an exercise price of \$2.50 per share, and in November 2002 (for year 2003) with an exercise price of \$2.00 per share. It has also been the past practice of the Board to compensate the Chairman of the Board, and beginning with those issued for 2003, the Chairman of the Audit Committee, for their annual service by issuing to each of them options to purchase 15,000 shares of common stock exercisable over a term of five years from the date of issue. Pursuant to this practice, Theodore Stern received as Chairman of the Board 15,000 options in March 2002 and November 2002, with exercise prices of \$2.50 and \$2.00 per share, respectively. Steve Barnett received as Chairman of the Audit Committee 15,000 options in November 2002 (for year 2003) with an exercise price of \$2.00 per share.

The Director Stock Option Plan was adopted by the Board in May 2003 and approved by the stockholders in June 2003. The purposes of the plan are to attract, motivate and retain experienced and knowledgeable directors by offering them opportunities to increase their stock ownership interest in Buyers United. Each person serving as a director on the date options are issued under the plan is eligible to participate. The persons serving as Chairman of the Board and Chairman of the Audit Committee on the date options are issued for those positions under the plan are eligible to participate.

The Board has authorized the issuance or delivery of options to purchase an aggregate of 1,000,000 shares of common stock under the plan, subject to customary antidilution and other adjustments provided for in the plan. Each person serving as a director on March 1 of

each year is entitled to receive an option to purchase 25,000 common shares at an exercise price per share equal to the average fair market value on that date, but in no event less than the conversion price for the Series B Convertible Preferred Stock of Buyers United, which is now \$2.00 per share. On the dates the Board appoints the Chairman of the Board and Chairman of the Audit Committee to serve for the next year, each person so appointed is entitled to receive an option to purchase 15,000 common shares at an exercise price per share equal to the average fair market value on that date, but in no event less than the conversion price for the Series B Convertible Preferred Stock of Buyers United. Each option issued under the plan is exercisable over a term of five years. The number of options issuable each year under the plan, as well as options outstanding under the plan, is subject to customary antidilution and other adjustments provided for in the plan.

Options issued under the plan are not exclusive and the plan does not limit the authority of the Board or its committees to grant awards or authorize any other compensation, with or without reference to shares, under any other plan or authority.

The plan is administered by a committee, which is either the Board of Directors or a committee appointed by the Board for such purpose. The Board of Directors has not appointed a committee to administer the plan, so the entire Board is now the committee administering the plan. Subject to the limitations of the plan, the committee has broad authority under the plan, including, for example, the authority:

- o To construe and interpret this plan;
- o To make all other determinations required by this plan;
- o To maintain all the necessary records for the administration of this plan; and
- o To make and publish forms, rules and procedures for administration of the plan.

In 2004 the Board, and each of our directors individually, agreed to renounce their right to receive options under the plan for 2004, and instead receive options outside the plan for a lower number of shares. Accordingly, the Board approved in January 2004 the issuance to each director of options to purchase 10,000 shares of common stock and to Steve Barnett as chairman of the Audit Committee options to purchase 5,000 additional shares. All of the options are exercisable over a term of five years at \$3.05 per share, which was the market price for our common stock in the public market on the date of grant.

### **Code of Ethics**

Buyers United has adopted a Code of Ethics applicable to its chief executive officer and chief financial officer, a copy of which is included as an exhibit to this report.

### **Section 16(a) Filing Compliance**

Section 16(a) of the Securities Exchange Act of 1934 requires officers and directors of Buyers United and persons who own more than ten percent (10%) of a registered class of its equity securities to file reports of ownership and changes in their ownership on Forms 3,

4, and 5 with the Securities and Exchange Commission, and forward copies of such filings to Buyers United. Based on the copies of filings received by Buyers United, during the most recent fiscal year the directors, officers, and beneficial owners of more than ten percent (10%) of the equity securities of Buyers United registered pursuant to Section 12 of the Exchange Act have filed on a timely basis all required Forms 3, 4, and 5 and any amendments thereto except for Dallin Bagley, who filed one Form 4 late.

## ITEM 10. EXECUTIVE COMPENSATION

### Annual Compensation

The table on the following page sets forth certain information regarding the annual and long-term compensation for services in all capacities to Buyers United for the prior fiscal years ended December 31, 2003, 2002, and 2001, of those persons who were either (i) the chief executive officer during the last completed fiscal year or (ii) one of the other four most highly compensated executive officers as of the end of the last completed fiscal year whose annual salary and bonuses exceeded \$100,000 (collectively, the "Named Executive Officers").

Name and Principal Position	Year	Annual Compensation	Long Term Compensation	All Other Compensation (\$)
		Salary (\$)	Securities Underlying Options/SARs (#)	
Theodore Stern	2003	-0-	36,300	74,750
Chairman and Chief	2002	-0-	80,000	70,000
Executive Officer	2001	-0-	40,000	70,000
Paul Jarman	2003	132,808	-0-	18,463
President and Director	2002	125,000	11,668	21,481
	2001	122,710	-0-	57,067
G. Douglas Smith	2003	132,808	-0-	18,463
Executive Vice President	2002	125,000	7,668	21,252
	2001	124,405	178,334	-0-
Kenneth D. Krogue	2003	137,698	-0-	18,463

Executive Vice President 2002 123,538 106,739 22,282 2001 109,851 40,000 13,866

## Stock Options

The following table sets forth certain information with respect to grants of stock options during 2003 to the Named Executive Officers.

Name and Principal Position	Number of Securities Underlying Options Granted	% of total Options/SARs Granted to Employees in Fiscal Year	Exercise or Base Price (\$/Sh)	Expiration Date
Theodore Stern Chairman, Chief Executive Officer	-0-	-	-	-
Paul Jarman President and Director	12,000 12,500 150,000	1.8 1.8 21.9	\$2.42 \$2.40 \$2.50	01/15/08 09/24/08 11/11/08
G. Douglas Smith Executive Vice President	-0-	-	-	-
Kenneth D. Krogue Executive Vice President	-0-	-	-	-

The following table sets forth certain information with respect to unexercised options held by the Named Executive Officers. No outstanding options held by the Named Executive Officers were exercised in 2003.

Name and Principal Position	Number of Securities Underlying Unexercised Options at Fiscal Year End (#) Exercisable/ Unexercisable	Value of Unexercised In-the-Money Options At Fiscal Year End (\$) (1) Exercisable/ Unexercisable
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Theodore Stern Chairman, Chief Executive Officer	172,500 / -0-	\$88,200 / -0-
Paul Jarman President and Director	452,966 / 150,000	\$152,848 / \$82,500
G. Douglas Smith Executive Vice President	624,916 / -0-	\$262,218 / -0-
Kenneth D. Krogue Executive Vice President -----	333,770 / -0-	\$199,664 / -0-

(1) This value is determined on the basis of the difference between the fair market value of the securities underlying the options and the exercise price at December 31, 2003. The fair market value of Buyers United's common stock at December 31, 2003 is determined by the last sale price on that date, which was \$3.05 per share.

### **Description of Long Term Stock Incentive Plan**

The purpose of the Long Term Stock Incentive Plan (the "Plan") is to provide directors, officers, employees, and consultants with additional incentives by increasing their ownership interests in Buyers United. Directors, officers, and other employees of Buyers United and its subsidiaries are eligible to participate in the Plan. In addition, awards may be granted to consultants providing valuable services to Buyers United. As of December 31, 2003, Buyers United and its affiliates employed approximately 190 individuals who are eligible to participate in the Plan. The Board grants awards under the Plan. Awards may include incentive stock options, non-qualified stock options, stock appreciation rights, stock units, restricted stock, restricted stock units, performance shares, performance units, or cash awards.

The Board has discretion to determine the terms of an award under the Plan, including the type of award, number of shares or units covered by the award, option price, term, vesting schedule, and post-termination exercise period or payment. Notwithstanding this discretion: (i) the number of shares subject to an award granted to any individual in any calendar year may not exceed 100,000 shares; (ii) the option price per share of common stock may not be less than 100 percent of the fair market value of such share at the time of grant or less than 110% of the fair market value of such shares if the option is an incentive stock option granted to a stockholder owning more than ten percent of the combined voting power of all classes of the stock of Buyers United (a "10% stockholder"); and (iii) the term of any incentive stock option may not exceed 10 years, or five years if the option is granted to a 10% stockholder. As of December 31, 2003, awards in the form of qualified incentive stock options to purchase a total of 863,639 shares were outstanding under the Plan.



A maximum of 1,200,000 shares of common stock may be subject to outstanding awards, determined immediately after the grant of any award under the Plan. Shares of common stock, which are attributable to awards that have expired, terminated, or been canceled or forfeited during any calendar year, are available for issuance or use in connection with future awards.

The Plan was effective March 11, 1999, and is not limited in duration. No incentive stock option may be granted more than 10 years after the effective date. The Plan may be amended by the Board without the consent of the stockholders, except that stockholder approval is required for any amendment that materially increases the aggregate number of shares of stock that may be

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issued under the plan or materially modifies the requirements as to eligibility for participation in the Plan.

## ITEM 11. SECURITY OWNERSHIP OF BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth, as of March 15, 2004, the number and percentage of the outstanding shares of common stock and warrants and options that, according to the information supplied to Buyers United, were beneficially owned by (i) each person who is currently a director, (ii) each executive officer, (iii) all current directors and executive officers as a group and (iv) each person who, to the knowledge of Buyers United, is the beneficial owner of more than five percent of the outstanding common stock. Except as otherwise indicated, the persons named in the table have sole voting and dispositive power with respect to all shares beneficially owned, subject to community property laws where applicable.

Name and Address -----	Common Shares -----	Percent of Class (1) -----
Principal stockholders: -----		
I-Link Incorporated 9775 Business Park Avenue San Diego, CA 92131	808,546	6.2
Officers and Directors: -----		
Theodore Stern (2) 2970 One PPG Place Pittsburgh, PA 15222	2,694,435	18.1

Gary Smith (2)(3) 14870 Pony Express Road Bluffdale, UT 84065	520,084	4.0
Edward Dallin Bagley (2) 2350 Oakhill Drive Salt Lake City, UT 84121	1,371,954	9.9
Steve Barnett (2) 666 Dundee Road, Suite 1704 Northbrook, IL 60062	394,949	3.0
Paul Jarman (2) 14870 Pony Express Road Bluffdale, UT 84065	742,052	5.5
David R. Grow (2) 14870 Pony Express Road Bluffdale, UT 84065	150,000	1.2
G. Douglas Smith (2)(3) 14870 Pony Express Road Bluffdale, UT 84065	688,768	5.1
Kenneth D. Krogue (2) 14870 Pony Express Road Bluffdale, UT 84065	352,226	2.6
All Executive officers and Directors as a Group (8 persons)	6,614,468	37.9

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(1) These figures represent the percentage of ownership of the named individuals assuming each of them alone has exercised his or her options or conversion rights to purchase common shares, and percentage ownership of all officers and directors as a group, assuming all purchase and conversion rights held by such individuals are exercised.

(2) These figures include: for Mr. Stern Series A and B Preferred Stock convertible to 377,500 shares of common stock, warrants to purchase 680,000 shares of common stock at exercise prices ranging from \$2.00 to \$2.50 per share, options to purchase 102,500 shares of common stock at exercise prices ranging from \$2.50 to \$5.06 per share, and 766,250 common shares for which outstanding promissory notes are convertible at rates of between \$2.50 and \$2.00; for Mr. Gary Smith options to purchase 122,500 shares at prices ranging from \$2.00 to \$5.06 per share; for Mr. Bagley Series A and B Preferred Stock convertible to 157,500 shares of common stock, warrants to purchase 275,000 shares of common stock at exercise prices ranging from \$2.00 to \$2.50 per share, options to purchase 47,500 shares of common stock at exercise prices ranging from \$3.05 to \$5.06, and 375,000 common shares for which outstanding

promissory notes are convertible at the rate of \$2.00 per share; for Mr. Barnett Series A Preferred Stock convertible to 20,000 shares of common stock and options to purchase 130,000 shares at exercise prices ranging from \$2.00 to \$5.06 per share; for Mr. Jarman options to purchase 452,966 shares of common stock at exercise prices ranging from \$2.00 to \$5.39 per share; for Mr. G. Douglas Smith options to purchase 624,916 shares of common stock at exercise prices ranging from \$2.00 to \$5.39 per share; for Mr. Grow options to purchase 150,000 shares of common stock at exercise prices ranging from of \$2.00 to \$3.05; and for Mr. Krogue options to purchase 333,770 shares of common stock at exercise prices ranging from \$2.00 to \$2.70 per share.

(3) Gary Smith is G. Douglas Smith's father.

## ITEM 12. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The following discussion includes certain relationships and related transactions that occurred during Buyers United's fiscal years ended December 31, 2003 and 2002.

### Transactions with Theodore Stern

Beginning in December 2000 and continuing into 2003, Theodore Stern, the Chairman of the Board of Directors and Chief Executive Officer, made loans to Buyers United for working capital purposes. All of the loans bear interest at the rate of 12 percent per annum payable monthly and are unsecured. In consideration for many of the loans, we issued common stock to Mr. Stern and recorded the value of the stock at the market price on the date of issuance. The following table shows the date and principal amount of the loans, the maturity dates, the number of shares of common stock issued in consideration for the loans, and the value of the common stock:

Date of Loan -----	Maturity Date -----	Principal Amount (\$) -----	Number of Shares -----	Value of Shares (\$) -----
December 7, 2000	July 5, 2004	100,000	10,000	16,562
January 4, 2001	July 5, 2004	180,000	20,000	22,500
January 19, 2001	July 5, 2004	100,000	10,000	15,625
February 15, 2001	July 5, 2004	10,000	1,000	1,500
March 26, 2001	July 5, 2004	100,000	10,000	10,312
June 5, 2001	July 5, 2004	500,000*	50,000	60,000
June 15, 2001	July 5, 2004	150,000*	15,000	18,750
June 21, 2001	July 5, 2004	100,000*	10,000	12,500
June 26, 2001	July 5, 2004	50,000*	5,000	6,250
July 6, 2001	July 5, 2004	100,000*	10,000	11,000
July 18, 2001	July 5, 2004	150,000*	15,000	12,750
August 30, 2001	July 5, 2004	275,000*	27,500	22,000
September 5, 2001	July 5, 2004	100,000*	10,000	8,500

September 19, 2001	July 5, 2004	100,000*	10,000	6,800
October 15, 2001	July 5, 2004	50,000*	10,000	6,100
December 12, 2001	July 5, 2004	100,000*	10,000	6,400

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January 18, 2002	July 5, 2004	100,000*	10,000	10,000
December 20, 2002	December 20, 2004	112,500**	-0-	-0-
February 28, 2003	July 1, 2004	100,000***	-0-	-0-
July 5, 2003	July 5, 2005	86,563***	-0-	-0-
July 5, 2003	July 5, 2005	348,825	-0-	-0-
-----				

\* Indicates the note is convertible into common stock at a rate of \$2.50 \*\* Indicates the note is convertible into common stock at a rate of \$2.00 \*\*\* This note was repaid in 2003

In October 2000, the Board approved a consulting agreement with Mr. Stern. Pursuant to this contractual arrangement Mr. Stern receives a monthly fee of \$6,250 and expense allowance of \$500 in connection with duties performed as our Chief Executive Officer. He earned, respectively, \$74,750 and \$70,000 in 2003 and 2002 under this arrangement, and \$6,250 remained unpaid as of December 31, 2003.

In November 2001, we agreed to issue 50,000 shares to Mr. Stern in consideration of extending the maturity date of the June 5, 2001 \$500,000 promissory note to July 5, 2003. The value of the shares was recorded at \$31,500. On December 4, 2001, we agreed to issue 156,500 shares to Mr. Stern in consideration of extending the maturity date of the remaining \$1,565,000 then owing in notes payable listed above to July 5, 2003. The value of the shares was recorded at \$93,900. All these notes were later extended further to July 5, 2004, but no additional compensation was paid to Mr. Stern.

In September 2001, Buyers United issued 25,000 shares to Mr. Stern in consideration for Mr. Stern's personal guaranty of Buyers United's payment obligations under a new contract with Global Crossing Communications, Inc., that provides telecommunication services to us for resale. The shares were valued at \$17,500 based on the then current market price.

In February 2002, Mr. Stern gave his personal guaranty of up to \$250,000 of obligations arising under our resale contract with MCI WorldCom, Inc. In consideration for providing the guaranty, we issued 25,000 shares to Mr. Stern valued at \$30,750 based on the then current market price.

In December 2002, Mr. Stern participated in providing funding for a deposit in connection with acquiring customers from Touch America, Inc. The total amount raised was \$3,187,500, of which total Mr. Stern contributed \$137,500 under terms identical to the other unaffiliated investors. All the unsecured promissory notes bear interest at 10 percent, payable monthly. Principal payments are also due monthly, based on 10 percent of the net billings collected from the Touch America customers during the prior calendar month, and the notes have no maturity date. As of December 31, 2003, we had repaid \$84,854 of the principal on this note.

On January 15, 2003, Mr. Stern gave his personal guaranty of up to \$250,000 of obligations arising under a resale contract with Williams Communications. In consideration for providing the guaranty, we issued 15,000 shares to Mr. Stern valued at \$36,300 based on the then current market price.

#### Transactions with other related parties

In October 2000, the Board approved a two-year consulting arrangement with Gary Smith, a member of the Board. No fees were actually paid to Mr. Smith during 2000, and up through October 2002, Mr. Smith was paid \$110,000 in fees under his consulting arrangement.

On January 15, 2002, Paul Jarman, G. Douglas Smith, and Kenneth D. Krogue made unsecured loans to Buyers United in the total principal amount of \$79,998, due July 15, 2003 and bearing interest at the rate of 12 percent per annum. In consideration for making the loans, Buyers United agreed to issue a total of 7,998 shares to these individuals valued at \$8,798 based on the market price on the date of issuance. These loans were repaid in July 2003.

At the end of 2002 and during the first part of 2003, Edward Dallin Bagley made two-year unsecured loans to Buyers United aggregating \$750,000. The notes bear interest at 12 percent payable monthly, and are convertible into 375,000 shares of common stock (conversion rate of \$2.00 per share).

In February 2003, Buyers United issued a 12 percent unsecured promissory note to Steve Barnett in exchange for a loan of \$50,000. Interest is payable monthly and the loan matures on July 1, 2004.

## **ITEM 13. EXHIBITS AND REPORTS ON FORM 8-K**

### **Exhibits**

Copies of the following documents are included as exhibits to this Form 10-KSB pursuant to Item 601 of Regulation S-B.

Exhibit No. -----	Title of Document -----
3.1	Certificate of Incorporation, as amended
3.2	Certificate of Designation of Preferred Stock (1)
3.3	By-Laws (1)
3.4	Series B Preferred Stock Designation (2)
10.1	Form of Warrant issued to lenders (2)
10.2	Form of Warrant issued as part of units with Series B Preferred Stock (2)
10.3	Form of option for employees and directors (3)
10.4	Long-Term Stock Incentive Plan (1)
10.5	Asset Purchase Agreement dated December 6, 2002, with I-Link Communications, Inc. and I-Link Incorporated, without exhibits (4)
10.6	Reconciliation Agreement dated March 9, 2004 with Acceris Communications and I-Link Communications (7)
10.7	Asset Purchase Agreement dated December 20, 2002 with Touch America, Inc., without exhibits (4)
10.8	Amendment No. 1 to the Asset Purchase Agreement dated December 20, 2002 that was made June 6, 2003 by Buyers United and Touch America (5)
10.9	Form of note agreement issued April to August 2002 to Noteholders (4)
10.10	Form of warrant agreement issued to certain noteholders (4)
10.11	Form of note agreement issued on December 20, 2002 to the noteholders who provided financing for the Touch America deposit, including as exhibits the form of note and warrant issued (4)
10.12	Cooperation and Management Agreement between Buyers United and MyACD, Inc., dated October 1, 2003, excludidng:

Schedule I - Buyers United Existing Customers;  
Schedule II - MyACD Customers;  
Schedule III - Enhanced Services Marketing Budget;  
Schedule IV - Monthly Budget Payments; and  
Schedule V - Revised Wholesale Services Agreement Pricing (6)

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10.13	Purchase Option Agreement between Buyers United, Michael L. Shelton and David O. Peterson dated October 1, 2003, excluding: Exhibit A - Form of Term Note; Exhibit B - Form of Security and Pledge Agreement; Exhibit C - Form of Term Note; Exhibit D - Form of Security and Pledge Agreement; Exhibit E - Form of Employment Agreement; Exhibit F - Form of Stock Option Grant; and Exhibit G - Form of Employment Agreement (6)
10.14	Form of Securities Purchase Agreement dated March 10, 2004 (7)
10.15	Form of registration Rights Agreement dated March 10, 2004 (7)
14.1	Code of Ethics
21.1	List of Subsidiaries
31.1	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certifications of the Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

(1) These documents were filed as exhibits to the Registration Statement on Form 10-SB filed by Buyers United with the Securities and Exchange Commission on August 3, 1999, and are incorporated herein by this reference.

(2) These documents were filed as exhibits to the annual report on Form 10-KSB for 2000 filed by Buyers United with the Securities and Exchange Commission on April 10, 2001, and are incorporated herein by this reference.

(3) This document was filed as an exhibit to the annual report on Form 10-KSB for 2001 filed by Buyers United with the Securities and Exchange Commission on April 16, 2002, and is incorporated herein by this reference.

(4) These documents were filed as exhibits to the annual report on Form 10-KSB for 2002 filed by Buyers United with the Securities and Exchange Commission on April 14, 2003, and are incorporated herein by this reference.

(5) This document was filed as an exhibit to the quarterly report on Form 10-QSB for June 30, 2003 filed by Buyers United with the Securities and Exchange Commission on August 14, 2003, and is incorporated herein by this reference.

(6) These documents were filed as exhibits to the quarterly report on Form 10-QSB for September 30, 2003 filed by Buyers United with the Securities and Exchange Commission on November 14, 2003, and are incorporated herein by this reference.

(7) These documents were filed as exhibits to the current report on Form 8-K filed by Buyers United with the Securities and Exchange Commission on March 17, 2004, and are incorporated herein by this reference.

### **Form 8-K Filings**

There were no filings on Form 8-K during the three months ended December 31, 2003.

## **ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

The aggregate fees and expenses billed by our principal accounting firm, Crowe Chizek and Company LLC for fees and expenses billed for fiscal years ended December 31, 2003 and 2002 are as follows:

	2003	2002
	-----	-----
Audit fees	\$ 77,890	\$ 99,361
Audit related fees	69,585	22,765
	-----	-----
Total audit and related fees	147,475	122,126
Tax fees	53,700	24,800
	-----	-----



Total fees	\$201,175	\$146,926
	=====	=====

Audit related fees were for reviews of our filings on Form 10-QSB for 2003 and 2002, meetings with the Audit Committee, and work required by our filing of a registration statement on Form SB-2 for selling security holders in September 2003.

Each of the permitted non-audit services has been pre-approved by the Audit Committee or the Audit Committee's Chairman pursuant to delegated authority by the Audit Committee, other than de minimus non-audit services for which the pre-approval requirements are waived in accordance with the rules and regulations of the Securities and Exchange Commission.

The Audit Committee charter provides that the Audit Committee will pre-approve audit services and non-audit services to be provided by our independent auditors before the accountant is engaged to render these services. The Audit Committee may consult with management in the decision-making process, but may not delegate this authority to management. The Audit Committee may delegate its authority to pre-approve services to one or more committee members, provided that the designees present the pre-approvals to the full committee at the next committee meeting.

## SIGNATURES

In accordance with Section 13 or 15(d) of the Exchange Act, the registrant caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

### BUYERS UNITED, INC.

*Date: March 29, 2004*

*By: /s/ Theodore Stern, Chief Executive Officer*

-----

*Date: March 29, 2004*

*By: /s/ David R. Grow, Chief Financial Officer*

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In accordance with the Exchange Act, this report has been signed by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

*Date: March 29, 2004*

*/s/ Theodore Stern, Director*  
-----

*Date: March 29, 2004*

*/s/ Steve Barnett, Director*  
-----

*Date: March 29, 2004*

*/s/ Gary Smith, Director*  
-----

*Date: March 29, 2004*

*/s/ Edward Dallin Bagley, Director*  
-----

*Date: March 29, 2004*

*/s/ Paul Jarman, Director*  
-----

**BUYERS UNITED, INC. AND SUBSIDIARY**  
**Consolidated Financial Statements**  
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**REPORT OF INDEPENDENT AUDITORS**

Board of Directors and Shareholders  
Buyers United, Inc. and Subsidiary  
Salt Lake City, Utah

We have audited the accompanying consolidated balance sheet of Buyers United, Inc. and Subsidiary as of December 31, 2003 and the related consolidated statements of operations, stockholders' deficit, and cash flows for each of the two years in the period ended December 31, 2003. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Buyers United, Inc. and Subsidiary as of December 31, 2003 and the results of their operations and their cash flows for each of the two years in the period ended December 31, 2003 in conformity with accounting principles generally accepted in the United States of America.

**Crowe Chizek and Company LLC**

Oak Brook, Illinois  
March 11, 2004, except for Note 14  
as to which the date is March 15, 2004

**BUYERS UNITED, INC.**  
**CONSOLIDATED BALANCE SHEET**  
December 31, 2003

# ASSETS

## Current assets:

Cash and cash equivalents	\$ 3,055,384
Restricted cash	1,569,336
Accounts receivable, net of allowance for uncollectible accounts of \$2,931,000	8,162,483
Other current assets	243,844

-----

Total current assets 13,031,047

Property and equipment, net	2,424,642
Intangible assets, net	8,018,682
Other assets	496,787

-----

Total assets \$ 23,971,158

=====

# LIABILITIES AND STOCKHOLDERS' DEFICIT

## Current liabilities:

Line of credit	\$ 4,093,782
Current portion of long-term debt and capital lease obligations	7,781,484
Accounts payable	11,248,152
Accrued liabilities	1,828,864

-----

Total current liabilities 24,952,282

Long-term debt and capital lease obligations 646,126

-----

Total liabilities 25,598,408

## Stockholders' deficit:

Preferred stock, \$0.0001 par value, 15,000,000 shares authorized; Series A 8% cumulative convertible preferred stock; 1,865,000 shares issued and outstanding (liquidation value of \$3,730,000)	187
Series B 8% cumulative convertible preferred stock; 721,729 shares issued and outstanding (liquidation value of \$7,217,290)	72
Common stock, \$0.0001 par value; 100,000,000 shares authorized; 7,604,584 shares issued and outstanding	760
Additional paid-in capital	20,193,148
Warrants and options outstanding	3,928,110
Accumulated deficit	(25,749,527)

-----

Total stockholders' deficit (1,627,250)

-----

Total liabilities and stockholders' deficit

\$ 23,971,158  
=====

See accompanying notes

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**BUYERS UNITED, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**

	Year Ended December 31,	
	2003	2002
Revenues	\$ 63,312,964	\$ 30,163,450
Operating expenses:		
Costs of revenues	34,597,486	16,295,201
General and administrative	14,830,565	7,365,569
Selling and promotion	10,839,529	4,646,029
Total operating expenses	60,267,580	28,306,799
Income from operations	3,045,384	1,856,651
Other income (expense):		
Interest income	13,513	17,980
Interest expense	(1,884,258)	(1,544,448)
Total other expense, net	(1,870,745)	(1,526,468)
Net income	\$ 1,174,639	\$ 330,183
8% Preferred dividends on Series A and B preferred stock	(873,495)	(749,725)
Net income (loss) applicable to common stockholders	\$ 301,144	\$ (419,542)

=====

Net income (loss) per common share:  
 Basic  
 Diluted

\$ 0.05 \$ (0.07)  
 0.04 (0.07)

Weighted average common shares outstanding:  
 Basic 6,378,047 5,740,811 Diluted 6,847,646 5,740,811

See accompanying notes

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**BUYERS UNITED, INC. AND SUBSIDIARY  
 CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT**

Stock	Additional	Preferred Stock		Common
-----	Paid-in	-----		-----
Amount	Capital	Shares	Amount	Shares
-----	-----	-----	-----	-----
Balance at December 31, 2001		2,433,800	\$ 244	5,312,629
\$ 531	\$15,190,855			
6	Conversion of preferred shares to common (4)	(15,000)	(2)	55,000
2	Issuance of common shares in connection with notes payable 18,796	-	-	17,998
-	Issuance of warrants for services and with consulting agreements -	-	-	-
-	Amortization of deferred consulting fees	-	-	-

-	-			
	Issuance of warrants with notes payable	-	-	-
-	-			
	Issuance of common stock for debt guarantee	-	-	25,000
3	30,747			
	Imputed interest on notes payable	-	-	-
-	28,686			
	Cancellation of warrants issued for services	-	-	-
-	-			
	Preferred stock dividends	-	-	-
-	-			
	Issuance of common shares as payment of preferred stock dividends	-	-	574,635
57	750,296			
	Net income	-	-	-
-	-			
-----		-----	-----	-----
Balance at December 31, 2002		2,418,800	242	5,985,262
599	16,019,376			
	Conversion of preferred shares to common	(116,000)	(11)	580,000
58	(47)			
	Issuance of preferred stock in connection with the I-Link acquisition	283,929	28	-
-	1,613,855			
	Exercise warrants to purchase Common Stock, net of issuance costs	-	-	522,500
52	1,395,020			
	Exercise employee options to purchase Common Stock	-	-	27,500
3	54,997			
	Issuance of common shares in connection with notes repayment	-	-	50,000
5	(5)			
	Repurchase shares from stockholders	-	-	(2,774)
-	(4,851)			
	Amortization of deferred consulting fees	-	-	-
-	-			
	Issuance of warrants for services	-	-	-
-	-			
	Issuance of common stock for debt guarantee	-	-	15,000
1	36,298			
	Imputed interest on notes payable	-	-	-
-	5,312			
	Cancellation of warrants issued for services	-	-	-
-	304,690			
	Preferred stock dividends	-	-	-
-	-			
	Issuance of common shares as payment of preferred stock dividends	-	-	427,096

42	768,503			
	Net income	-	-	-
-	-			
-----	-----	-----	-----	-----
	Balance at December 31, 2003	2,586,729	\$ 259	7,604,584
\$ 760	\$20,193,148			
=====	=====	=====	=====	=====

-continued-

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**BUYERS UNITED, INC. AND SUBSIDIARY  
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT**

	Warrants/ Options	Deferred Consulting	
Accumulated	Outstanding	Fees	Deficit
Total	-----	-----	-----
Balance at December 31, 2001	\$4,383,334	\$(98,406)	
\$(25,631,129) \$(6,154,571)			
Conversion of preferred shares to common	-	-	
-			
Issuance of common shares in connection with notes payable	-	-	
- 18,798			
Issuance of warrants for services and with consulting agreements	102,118	-	
- 102,118			
Amortization of deferred consulting fees	-	73,232	
- 73,232			
Issuance of warrants with notes payable	232,259	-	
- 232,259			
Issuance of common stock for debt guarantee	-	-	
- 30,750			
Imputed interest on notes payable	-	-	



-	28,686		
	Cancellation of warrants issued for services	(125,197)	-
-	(125,197)		
	Preferred stock dividends	-	-
(749,725)	(749,725)		
	Issuance of common shares as payment of preferred stock dividends	-	-
-	750,353		
	Net income	-	-
330,183	330,183		
-----			
--	-----		
	Balance at December 31, 2002	4,592,514	(25,174)
	(26,050,671) (5,463,114)		
	Conversion of preferred shares to common	-	-
-	-		
	Issuance of preferred stock in connection with the I-Link acquisition	-	-
-	1,613,883		
	Exercise warrants to purchase Common Stock, net of issuance costs	(385,055)	-
-	1,010,017		
	Exercise employee options to purchase Common Stock	-	-
-	55,000		
	Issuance of common shares in connection with notes repayment	-	-
-	-		
	Repurchase shares from stockholders	-	-
-	(4,851)		
	Amortization of deferred consulting fees	-	25,174
-	25,174		
	Issuance of warrants for services	25,341	-
-	25,341		
	Issuance of common stock for debt guarantee	-	-
-	36,299		
	Imputed interest on notes payable	-	-
-	5,312		
	Cancellation of warrants issued for services	(304,690)	-
-	-		
	Preferred stock dividends	-	-
(873,495)	(873,495)		
	Issuance of common shares as payment of preferred stock dividends	-	-
-	768,545		
	Net income	-	-
1,174,639	1,174,639		
-----			
--	-----		

Balance at December 31, 2003  
 \$(25,749,527) \$(1,627,250)

\$3,928,110 \$ -  
 =====

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See accompanying notes

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**BUYERS UNITED, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

	Year Ended December 31,	
	2003	2002
Cash flows from operating activities:		
Net income	\$ 1,174,639	\$ 330,183
Adjustments to reconcile net income to netcash used in operating activities:		
Depreciation and amortization	3,863,516	1,191,196
Amortization included in interest expense resulting from issuing stock with notes	5,312	28,686
Amortization of discount on notes payable	414,301	237,444
Amortization of note financing costs	115,182	174,977
Amortization of deferred consulting fees	25,174	73,232
Expense related to the grant of options to purchase common shares	-	(23,079)
Changes in operating assets and liabilities:		
Accounts receivable	(2,512,269)	(3,378,341)
Other assets	(697,427)	(2,379,009)
Checks in excess of available cash balances	-	(186,866)
Accounts payable	4,711,897	1,821,236
Accrued liabilities	278,315	432,183
Net cash provided by (used in) operating activities	7,378,640	(1,678,158)
Cash flows from investing activities:		
Increase in other assets	(167,360)	(194,915)
Purchases of property and equipment	(1,574,986)	(317,399)
Purchase of customer accounts	-	(3,000,000)

	-----	-----
Net cash used in investing activities	(1,742,346)	(3,512,314)
	-----	-----
Cash flows from financing activities:		
Restricted cash	(985,334)	106,310
Net borrowings and payments under line of credit	2,817,530	702,080
Borrowings under notes payable, net of debt issuance costs	2,299,955	7,818,850
Principal payments on notes payable and other long-term obligations	(8,767,587)	(2,499,508)
Exercise of warrants and employee options, net of offering costs	1,065,018	-
Repurchase of shares from stockholders with less than 100 shares	(4,852)	-
	-----	-----
Net cash provided by (used in) financing activities	(3,575,270)	6,127,732
	-----	-----
Net increase in cash and cash equivalents	2,061,024	937,260
Cash at the beginning of the period	994,360	57,100
	-----	-----
Cash at the end of the period	\$ 3,055,384	\$ 994,360
	=====	=====

See accompanying notes

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**BUYERS UNITED, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

	Year Ended December 31,	
	-----	-----
	2003	2002
	-----	-----
Supplemental cash flow information:		
Cash paid for interest	\$1,208,543	\$ 890,490

Supplemental schedule of noncash investing and financing activities:

Issuance of common shares in payment of preferred stock dividend	\$ 768,574	\$ 750,353
Issuance of common shares in payment of deferred financing costs	-	18,793
Issuance of common shares for officer's personal guaranty	36,300	30,750
Issuance of warrants with promissory notes	-	232,259
Accrual of dividend payable on preferred stock	873,495	749,725
Retire and replace note payable	800,000	-
Acquire customers from Touch America	3,411,421	-
Acquire customers from Glyphics, Inc.	543,558	-
Issuance of preferred stock to acquire VoIP Network assets	1,705,236	-
Convert accrued interest to note payable	435,388	-
Capital expenditures financed with capital lease obligation	100,691	-

See accompanying notes

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## NOTE 1 - DESCRIPTION OF THE COMPANY AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

### Organization

Buyers United, Inc. ("the Company") was incorporated on August 23, 1994 in the state of Utah and was reincorporated in the state of Delaware on April 9, 1999. During 2003, the Company established a wholly-owned subsidiary in Virginia for the purpose of conducting business in that state.

Buyers United is an aggregator and provider of telecommunications services. The Company contracts with a number of third party providers for the right to resell the various telecommunication services and products they provide, and then offers all of these various services to its customers. The Company also operates a dedicated VoIP Network, and advanced customer contact handling/management software applications that enable it to offer enhanced services to customers. The variety of services and products the Company offers allows the customer to buy only those telecommunications services it needs from one source, combine those services in a customized package, receive one bill for those services, and make one call to Buyers United if a service problem or billing issue arises.

### Summary of Significant Accounting Policies

Principles of Consolidation: The accompanying consolidated financial statements include the accounts of Buyers United, Inc. and its wholly-owned subsidiary. All significant intercompany accounts and transactions have been eliminated upon consolidation.

Use of Estimates in the Preparation of Financial Statements: The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates. Significant estimates include the allowance for doubtful accounts and attrition rates used to determine the estimated useful lives of customer lists acquired.

Revenue Recognition: The Company's revenue recognition policy with respect to reseller agreements is to record gross revenues and receivables from customers when the Company acts as principal in the transaction; takes title to the products or services; and has risks and rewards of ownership, such as risk of loss for collection, delivery, or returns. Revenues from sales of services are recognized upon providing the services to the customers.

Cash and cash equivalents: All highly liquid assets with an original maturity of three months or less are considered to be cash equivalents.

Restricted Cash: In accordance with the Company's agreements with RFC Capital Corp. (Note 5) and with certain vendors, the Company maintains a restricted cash account for the collection of the Company's receivables. As of December 31, 2003, the Company had \$1.6 million of cash that was restricted.

Accounts Receivable and Allowance for Doubtful Accounts: Accounts receivable is comprised of amounts billed and billable to customers, net of an allowance for uncollectible amounts. The accounts receivable balance outstanding as of December 31, 2003 is comprised of the following:

Billed amounts	\$ 9,863,111
Unbilled amounts	1,230,372
	-----
	11,093,483
Less: allowance for uncollectible accounts	(2,931,000)
	-----
	\$ 8,162,483

Finance charges are assessed to accounts once the amount owed is past due based on their specific terms. The allowance for doubtful accounts is estimated by management and is based on specific information about customer accounts, past loss experience, and general economic conditions. An account is written off by management when deemed uncollectible, although collections efforts may continue.

**Property and Equipment:** Property and equipment are stated at cost. Major additions and improvements are capitalized, while minor repairs and maintenance costs are expensed when incurred. In accordance with Statement of Position 98-1, "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use," the Company capitalizes certain costs incurred for the development of internal use software. These costs include the costs associated with coding, software configuration, upgrades, and enhancements. Of such costs the Company capitalized approximately \$118,000 and \$127,000 during 2003 and 2002, respectively.

Depreciation and amortization are computed using the straight-line method over the estimated useful lives of the related assets as follows:

Computer and office equipment 2 to 3 years Internal-use software 2 years Furniture and fixtures 3 to 7 years

**Advertising Costs:** The Company advertises its services through traditional venues such as print media to the general public. Costs associated with these advertising efforts are expensed as incurred, and were \$27,438 and \$29,781 for the years ended December 31, 2003 and 2002, respectively.

**Fair Value of Financial Instruments:** The carrying amounts reported in the accompanying consolidated balance sheet for cash, receivables, and accounts payable approximate fair values because of the immediate or short-term maturities of these financial instruments. The fair value of the Company's notes payable and preferred stock also approximate fair value based on current rates for similar debt and fixed-rate instruments.

**Debt Issuance Costs:** As an inducement to various investors, shareholders, and board members to lend monies to the Company, shares of common stock and warrants to purchase shares of common stock were issued to them. The fair market value of those shares at the date of issuance has been capitalized as debt issuance costs and is being amortized over the life of the loans. Amortization of these costs for the years ended December 31, 2003 and 2002 was \$414,298 and \$237,446, respectively, and are included in interest expense.

**Stock-Based Compensation:** Employee compensation expense via stock option grants is reported using the intrinsic method. No stock option-based compensation expense is included in net income (loss) as all options granted had an exercise price equal to or greater than the market price of the underlying common stock at the date of grant. The following table illustrates the effect on net income (loss) and earnings (loss) per share if expense was measured using the fair value recognition provisions of SFAS No. 123, "Accounting for Stock-Based Compensation":

	2003	2002
	-----	-----
Net income (loss) applicable to common stockholders:		

-----		
As reported	\$ 301,144	\$ (419,542)
Pro forma stock option-based compensation	(307,747)	(748,857)
	-----	-----
Pro forma net loss applicable to common stockholders	\$ (6,603)	\$ (1,168,399)
	=====	=====
Net income (loss) per common share:		
-----		
As reported:		
Basic	\$ 0.05	\$ (0.07)
Diluted	0.04	(0.07)
Pro forma		
Basic	\$ -	\$ (0.20)
Diluted	-	(0.20)

The fair value of the options granted during 2003 and 2002 was estimated at the date of grant using the following weighted average assumptions:

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	2003	2002
	----	----
Risk-free interest rate	2.89%	3.71%
Dividend yield	-	-
Expected volatility	75%	104%
Weighted average expected life	4.8 years	4.7 years

The weighted average fair values of options granted during the years ended December 31, 2003 and 2002 was \$1.42 and \$1.01, respectively. The pro forma effects of applying SFAS No. 123 are not indicative of future amounts. Additional awards in future years are anticipated.

**Income Taxes:** The Company recognizes a liability or asset for the deferred income tax consequences of all temporary differences between the tax bases of assets and liabilities and their reported amounts in the financial statements that will result in taxable or deductible amounts in future years when the reported amounts of the assets and liabilities are recovered or settled. These deferred

income tax assets or liabilities are measured using the enacted tax rates that will be in effect when the differences are expected to reverse. Recognition of deferred tax assets is limited to amounts considered by management to be more likely than not of realization in future periods.

**Net Income (Loss) Per Common Share :** Basic net income (loss) per common share ("Basic EPS") excludes dilution and is computed by dividing net income (loss) applicable to common shareholders by the weighted average number of common shares outstanding during the year. Diluted net income (loss) per common share ("Diluted EPS") reflects the potential dilution that could occur if stock options or other common stock equivalents were exercised or converted into common stock. The computation of Diluted EPS does not assume exercise or conversion of securities that would have an antidilutive effect on net loss per common share.

As of December 31, 2003, outstanding options of employees and directors, along with warrants held by investors which together aggregated 469,599 in accordance with the Treasury Stock method were included in the computation of EPS. 5,457,760 shares of common stock issuable upon the conversion of preferred stock were excluded from the computation of diluted EPS as their effect was antidilutive.

As of December 31, 2002, outstanding options of employees and directors to purchase 3,592,721 shares of common stock; 4,634,000 shares of common stock issuable upon the conversion of preferred stock; and 5,529,282 shares of common stock issuable upon exercise of warrants to purchase common stock were not included in the computation of Diluted EPS because they would be antidilutive.

### **Recent Accounting Pronouncements:**

In April 2002, the FASB issued SFAS No. 145, "Rescission of FASB Statement 4, 44, and 64, Amendment of FASB Statements 13, and Technical Corrections." SFAS No. 145 rescinds the provisions of SFAS No. 4 that requires companies to classify certain gains and losses from debt extinguishments as extraordinary items and amends the provisions of SFAS No. 13 to require that certain lease modifications be treated as sale/leaseback transactions. The provisions of SFAS No. 145 related to classification of debt extinguishments are effective for fiscal years beginning after May 15, 2002. Commencing January 1, 2003 the Company will classify debt extinguishments costs within income from operations. The provisions of SFAS No. 145 related to lease modifications are effective for transactions occurring after May 15, 2002. The adoption of this statement on January 2, 2003 did not have a material impact on the Company's financial position or results of operations.

In December 2002 the FASB issued SFAS No. 148 "Accounting for Stock Based Compensation - Transition and Disclosure." This statement amends SFAS No. 123, "Accounting for Stock-Based Compensation" to provide alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. This amendment also changes the disclosure requirements of SFAS No. 123 to require more prominent disclosures in both annual and interim financial statements about the methods of accounting for stock-based employee compensation and the effects of the method used on reported amounts. SFAS No. 148 is effective for fiscal years ending after December 15, 2002. The Company has opted to continue accounting for stock options under the intrinsic value method prescribed in APB Opinion No. 25 for the years ended December 31, 2003 and 2002. In addition, the Company has complied with the prominent disclosure requirements of SFAS No. 148.



In May 2003, the FASB issued SFAS No. 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity" ("SFAS No. 150"). SFAS No. 150 modifies the accounting for certain financial instruments that, under previous guidance, issuers could account for as equity. SFAS No. 150 requires that those instruments be classified as liabilities. SFAS No. 150 is effective for financial instruments entered into or modified after May 31, 2003, and otherwise is effective at the beginning of the first interim period that began after June 15, 2003. It is to be implemented by reporting the cumulative effect of a change in an accounting principle for financial instruments created before the issuance date of SFAS No. 150 and still existing at the beginning of the interim period of adoption. Restatement is not permitted. The Company's adoption of this Statement on July 1, 2003 did not have a material impact on its consolidated results of operations or financial position.

## **NOTE 2 - ACQUISITIONS**

In October 2003, Buyers United acquired the exclusive right to sell and manage the enhanced telecommunications functions of MyACD, Inc. ("MyACD"), with a one-year option to purchase it at a predetermined price. During the term of the agreement, Buyers United has the sole right to manage sales, service and billing of MyACD services. Under the agreement MyACD will continue to provide enhanced service development and configuration and Buyers United will reimburse MyACD for actual costs related to these activities.

During August 2003, Buyers United purchased approximately 12,000 long distance customers from Glyphics Communications, Inc. for \$543,558.

On December 20, 2002, Buyers United entered into an agreement with Touch America, Inc., a subsidiary of Touch America Holdings, Inc., to purchase a substantial number of its switched voice telecommunication customers, including the carrier identification code used to service those customers. In June 2003, the Company amended the purchase agreement to acquire additional switched voice and dedicated telecommunications customers and correct discrepancies in the list of customers originally purchased in December 2002. Buyers United did not purchase any accounts receivable, equipment, or other assets of Touch America. The total purchase price was \$6.5 million. Buyers United made an initial payment of \$3 million to Touch America in December 2002 and has made additional cash payments totaling \$3.4 million through March 4, 2004. The balance of \$93,988 is expected to be paid in April 2004.

On December 6, 2002, Buyers United entered into the Asset Purchase Agreement and Software License Agreement to purchase assets of I-Link, Inc., and its subsidiary, I-Link Communications, Inc., and license in perpetuity software developed by I-Link for the operation of a Voice over Internet Protocol ("VoIP") Network. Customer billings and related expenses incurred pursuant to a related Management Agreement between the parties were included in Buyers United's general and administrative expenses beginning December 6, 2002. The transaction closed effective May 1, 2003, at which time the Company began to recognize revenue earned and expenses incurred.

The assets acquired include dedicated equipment required for operating the VoIP Network, customers of I-Link serviced through the network, carrier identifications codes, and certain trademarks. In consideration for the assets and software license, Buyers United

issued to I-Link 246,430 shares of Series B Convertible Preferred Stock with a fair market value of \$1.4 million, assumed certain liabilities, and agreed to issue an additional 53,570 shares of Series B Convertible Preferred Stock in equal monthly installments over a term of 10 months commencing June 1, 2003, subject to satisfaction of certain conditions pertaining to provisioning of one of the former I-Link customers acquired in the transaction.

In connection with the closing, the parties together with Counsel Corporation, an Ontario corporation, and Counsel Communications LLC, a Delaware limited liability company, both affiliates of I-Link, entered into a Reimbursement Agreement pursuant to which Counsel Corporation, Counsel Communications, and I-Link agreed to reimburse Buyers United for any loss sustained as a result of any claims asserted against the assets acquired from I-Link by certain creditors of I-Link. Out of the shares it received in the transaction I-Link deposited in escrow 40,000 shares that may be applied to reimburse any such loss. This is in addition to 25,000 shares I-Link received in the transaction that has been deposited in escrow under the Asset Purchase Agreement to satisfy any claims for indemnification under the Asset Purchase Agreement. During 2004, these remaining 65,000 shares were delivered to Counsel Corporation.

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The following table presents a summary of the estimated fair values of the assets acquired and liabilities assumed as of December 31, 2003:

Computer and telecommunications switching equipment	\$ 754,966
Customer list	553,898
License on technology and patents	1,182,933
Carrier identification code	135,933
Deposit with a vendor	110,000
	-----
Total assets acquired	2,737,730
	-----
Accounts payable and accrued liabilities	737,829
Acquisition costs	294,665
	-----
Total liabilities assumed	1,032,494
	-----
Net assets acquired	\$1,705,236
	=====

The customer list and licensed technology will be amortized over a period of four years.

The following unaudited pro forma financial information presents results as if the acquisition had occurred at the beginning of the respective periods:

	Year ended December 31,	
	2003	2002
Net revenue	\$65,498,766	\$37,965,060
Net income (loss) applicable to common stockholders	\$ 19,175	\$(5,806,566)
Basic and diluted net income (loss) per share	\$ -	\$ (1.01)

These pro forma results have been prepared for comparative purposes only and include certain adjustments such as additional amortization expense as a result of identifiable tangible and intangible assets arising from the acquisition. The pro forma results are not necessarily indicative either of the results of operations that actually would have resulted had the acquisition been in effect at the beginning of the respective periods, or of results to be achieved in the future.

### NOTE 3 - PROPERTY AND EQUIPMENT

At December 31, 2003, property and equipment consisted of the following:

Computer and office equipment	\$3,724,164
Internal-use software	268,723
Furniture and fixtures	302,027
	-----
	4,294,914
Accumulated depreciation and amortization	(1,870,272)
	-----
	\$2,424,642
	=====

#### NOTE 4 - INTANGIBLE ASSETS

At December 31, 2003, intangible assets consisted of the following:

	Gross asset	Accumulated amortization	Intangible assets, net
	-----	-----	-----
Customer lists	\$ 10,760,307	\$ 3,840,679	\$ 6,919,628
Technology and patents	1,318,865	219,811	1,099,054
	-----	-----	-----
	\$ 12,079,172	\$ 4,060,490	\$ 8,018,682
	=====	=====	=====

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The Company participated in a direct response marketing campaign with LowerMyBills.com, Inc. (LMB), a web-based comparison shopping service. The fees associated with this advertising campaign were deferred and aggregated \$2.8 million until June 2003, when the Company ceased participating in the program. Amortization expense for these customers in 2003 and 2002, was \$1.2 million and \$761,091, respectively.

The Company also acquired new customer lists related to I-Link, Touch America, and Glyphics in 2003, which are predominantly corporate customers. In addition, the Company acquired technology and licenses related to I-Link in 2003. Amortization expense during 2003 for the additional customers was \$1.9 million, and was \$219,811 for the technology and licenses.

The Company estimates the useful lives of its acquired customer lists based upon attrition rates experienced by the Company. Historically, management estimated the useful lives between 24 to 36 months based upon the type of customer and service provided. Based upon recent attrition information which showed that customers were averaging longer lives, the Company changed the estimated useful lives for its customer lists prospectively in the fourth quarter of 2003. LMB customer lives were increased from 24 to 36 months. The impact of this change was a \$204,500 decrease in amortization expense in the fourth quarter of 2003. The customer lives of Touch America, I-Link and Glyphics were changed from 30 or 36 months to 48 months. The impact of this change was a \$306,053 decrease in amortization expense in the fourth quarter of 2003.

Amortization expense for all intangible assets during the four-year period ending December 31, 2007 is estimated to be \$2.7 million, \$2.5 million, \$2.2 million, and \$600,000, respectively.

#### NOTE 5 - LINE OF CREDIT

Buyers United has a line of credit agreement with RFC Capital Corporation that expires in January 2006. The available borrowing limit is \$5 million. Interest accrues at prime plus three percent, which was 7.00% as of December 31, 2003. During 2002, the interest rate on the line was prime plus six percent, which was 10.25% as of December 31, 2002. The facility allows the Company to obtain financing on its eligible accounts receivable, including unbilled receivables and regular monthly billings. The facility is collateralized by the underlying receivables. On December 31, 2003, Buyers United had financed the maximum amount available based on eligible accounts receivable at that time. This amount, less draws by RFC applied against the outstanding amount, aggregated \$4.1 million. The facility requires Buyers United to maintain a restricted cash account for the collection of the receivables. As of December 31, 2003, Buyers United had \$1.2 million of restricted cash associated with the RFC arrangement.

## NOTE 6 - ACCRUED LIABILITIES

At December 31, 2003, accrued liabilities consisted of the following:

Accrued commissions	\$ 669,523
Accrued dividends	478,599
Other	680,742
	-----
	\$1,828,864
	=====

## NOTE 7 - LONG-TERM DEBT AND NOTES PAYABLE

Long-term debt consists of the following:

Unsecured notes payable to the Chairman of the Board, bearing interest at 12 percent, payable monthly. Principal and unpaid interest are due and payable in July 2004, except for \$112,500 which matures in December 2004, and \$348,825 which matures in July 2005.	\$2,726,325
---	-------------

Unsecured notes payable to two Directors bearing interest at 12 percent, payable monthly. Maturity dates vary, from July 2004 through January 2005.	800,000
---	---------

Unsecured note payable to a relative of a Director, bearing interest at 12 percent payable monthly. Principal and unpaid

interest due in January 2005. 100,000

Promissory note payable to an individual bearing interest at 12 percent, payable monthly. Secured by equipment. Principal and unpaid interest due in July 2004. 293,333

Promissory notes payable to two individuals bearing interest at 12 percent, payable monthly. Secured by equipment. Principal and unpaid interest due in the summer of 2006. 191,954

Unsecured promissory notes bearing interest at ten percent and 12 percent, payable monthly. Principal payments due monthly, based on 20 percent to 40 percent of billings collected from specifically-designated customers referred from LowerMyBills.com, Inc. ("LMB"). The majority of these notes have no maturity date. The Company believes that all of the principal will be repaid during 2004, based on expected cash collections from these customers. 475,223

Unsecured promissory notes bearing interest at ten percent, payable monthly. Principal payments due monthly, based on ten percent of billings collected from customers acquired from Touch America, Inc. These notes have no maturity date. The Company believes that all principal will be repaid in 2005, based on expected cash collections from these customers. 2,358,412

Unsecured promissory note bearing interest at 10 percent, payable monthly. Principal payments due monthly, based on 30 percent of billings collected from customers recently acquired from Glyphics, Inc. The note has no maturity date. The Company believes that all principal will be repaid by the end of 2004, based on expected cash collections from these customers. 631,211

**Note payable to Touch America, Inc., with**

interest imputed at four percent, payable monthly. Principal payments due monthly, based on 7.2 percent of billings collected from customers acquired from Touch America, Inc. The obligation has no maturity date. The Company expects that all principal will be repaid by April 2004, based on expected cash collections

from these customers.	473,437
Other	295,238
Capital leases	82,477
	-----
	8,427,610
Less current portion	(7,781,484)
	-----
	\$ 646,126
	=====
Long-term debt maturities are as follows:	
2004	\$7,781,484
2005	623,719
2006	22,407
	-----
	8,427,610
Less current maturities	(7,781,484)
	-----
	\$ 646,126
	=====

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On February 28, 2003, the Company retired its \$1.1 million note payable by paying \$250,000 in cash and issuing a new promissory note for \$800,000. In addition, the Company issued 50,000 shares of common stock in connection with the original agreement. At December 31, 2003, the amount remaining due, less issuance costs, was \$631,211 (see above).

In connection with some of the LMB-related unsecured promissory notes, two-year warrants to purchase 562,950 shares of common stock at \$2.50 per share were issued to the noteholders. Warrants for an additional 94,950 shares have also been issued to the sales agents. The estimated fair value of the warrants of \$264,717, based on using the Black-Scholes pricing model, was allocated to the warrants and recorded as a discount to the carrying value of the notes. The Company paid approximately \$232,000 in commissions to sales agents. The Company paid approximately \$152,000 in commissions to sales agents in connection with the Touch America-related unsecured promissory notes. All these commission costs are also included in the discounts to the carrying value of the notes. The discount is being amortized to interest expense over the respective notes' estimated payment terms.

## NOTE 8 - LEASES

Buyers United leases executive office space in Bluffdale, Utah, a suburb of Salt Lake City. The offices consist of approximately 30,000 square feet. The current monthly lease rate is \$32,307. The lease for office space expires in January 2007, but the Company has an option to renew the lease for an additional three to five years. Through November 2004, Buyers United is leasing 14,339 square feet of space at 13751 S. Wadsworth Park Drive, Draper, Utah, at a monthly cost of \$16,728.

The Company also has one capital lease for computer software. The following is a schedule of future minimum payments under the leases as of December 31, 2003:

Year ending December 31,	Capital leases	Operating leases
	-----	-----
2004 . . . . .	\$ 34,690	\$ 571,692
2005 . . . . .	34,690	397,373
2006 . . . . .	23,128	407,307
2007 . . . . .	-	417,490
	-----	-----
Total future minimum lease payments . . . . .	92,508	\$1,793,862
		=====
Less amount representing interest . . . . .	(10,031)	
	-----	
Total obligations under capital leases . . . . .	82,477	
Less current portion . . . . .	(28,752)	
	-----	
Capital lease obligations, net of current portion	\$ 53,725	
	=====	

Rent expense was approximately \$519,500 and \$348,300 for the years ended December 31, 2003 and 2002, respectively.

## NOTE 9 - INCOME TAXES

The components of the Company's net deferred income tax assets and liabilities are as follows:

Deferred income tax assets:



-----	
Net operating loss carryforwards	\$5,001,000
Reserves and accrued liabilities	1,275,000
	-----
Total deferred income tax assets	6,276,000
Valuation allowance	(5,897,000)
	-----
Net deferred income tax asset	379,000
	-----
Deferred income tax liabilities:	
-----	
Tax depreciation in excess of book depreciation	(379,000)
	-----
Net deferred income tax liability	(379,000)
	-----
Net deferred income taxes	\$ -
	=====

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As of December 31, 2003, the Company had net operating loss carryforwards for federal income tax reporting purposes of approximately \$13,336,000. The tax net operating loss carryforwards will expire beginning in 2012.

Inasmuch as the Company's history includes accumulated net operating losses, it is uncertain as to whether the Company's deferred tax asset can be fully realized. Accordingly, a valuation allowance has been recorded to reduce the deferred income tax assets. The net change in the valuation allowance for deferred tax assets during the year ended December 31, 2003 was a decrease of \$416,000. During 2003 and 2002 no income tax expense was recorded due the reduction of the valuation allowance.

## NOTE 10 - CAPITAL TRANSACTIONS

**Preferred Stock:** The Board of Directors is authorized to classify any shares of the Company's authorized but unissued preferred stock in one or more series. With respect to each series, the Board of Directors is authorized to determine the number of shares that constitutes such series; the rate of dividend, if any, payable on shares of such series; whether the shares of such series shall be cumulative, non-cumulative, or partially cumulative as to dividends and the dates from which any cumulative dividends are to accumulate; whether the shares of such series may be redeemed, and, if so, the price or prices at which and the terms and conditions on which shares of such series may be redeemed; the amount payable upon shares of such series in the event of the voluntary or involuntary dissolution, liquidation, or winding up of the affairs of the Company; the sinking fund provisions, if any, for the

redemption of shares of such series; the voting rights, if any, of the shares of such series; the terms and conditions, if any, on which shares of such series may be converted into shares of capital stock of the Company of any other class or series; whether the shares of such series are to be preferred over shares of capital stock of the Company of any other class or series as to dividends or upon the voluntary or involuntary dissolution, liquidation, or termination of the affairs of the Company or otherwise; and any other characteristics, preferences, limitations, rights, privileges, immunities, or terms.

**Series A 8 percent Cumulative Convertible Preferred Stock:** During 1999, the Board of Directors authorized the issuance of 2,000,000 shares of Series A 8 percent Cumulative Convertible Preferred Stock ("Series A Preferred Stock") at an offering price of \$2.00 per share. Gross proceeds of \$4 million were raised upon sale of the shares.

The Series A Preferred Stock is convertible to common stock at any time at the election of the holder and, under limited circumstances, at the election of the Company. The conversion rate is one for one, subject to adjustment in the event of a recapitalization, reorganization, or other corporate restructuring or in the event that the Company shall sell or otherwise issue securities at a price below \$2.00 per share or the then adjusted conversion price. The Series A Preferred Stock can be redeemed at the Company's election at any time commencing January 1, 2005 at a redemption price of \$2.00 per share plus all accrued dividends as of the redemption date. During 2002 certain stockholders converted 5,000 Series A preferred shares into common shares.

**Series B 8 percent Cumulative Convertible Preferred Stock:** In September 2000, the Board of Directors authorized the issuance of 1,234,500 shares of Series B 8% Cumulative Convertible Preferred Stock ("Series B Preferred Stock") and related warrants to purchase common shares at an offering price of \$10.00 per unit. Each unit consists of one share of Series B Preferred Stock and five warrants to purchase one share of common stock at an exercise price of \$2.50 per share. During 2000, various investors made loans to the Company and subsequently elected to exchange their promissory notes for units. In addition to the converted loans of \$2.5 million, the Company raised \$2 million through the issuance of units through December 31, 2000 and \$1.1 million through the issuance of units in 2001.

In connection with the unit offering, the Company agreed to pay the Placement Agent a sales commission and expense allowance aggregating 13 percent of the gross proceeds from the sale of the Series B Preferred Stock, in addition to ten percent of the gross proceeds of certain related bridge financing. The Company also incurred approximately \$23,000 of direct expenses in connection with the offering. As additional consideration, the Company agreed to issue to the Placement Agent warrants to purchase 319,300 shares of the Company's common stock at an exercise price of \$2.50 per share.

As part of the Series B Preferred Stock offering, the Company issued 2,269,000 warrants to purchase common stock at \$2.50 per share. The Company allocated the net proceeds from the offering of \$4.2 million between the Series B Preferred Stock and the warrants based on estimated relative fair values. The Series B Preferred Stock was recorded at \$2.4 million, and the warrants were recorded at

\$1.8 million. The estimated fair value of the warrants was determined using the Black-Scholes pricing model. The Series B Preferred Stock is convertible to common stock at any time at the election of the holder and, under limited circumstances, at the election of the Company. The conversion rate is five for one, subject to adjustment in the event of a recapitalization, reorganization, or other corporate restructuring or in the event that the Company shall sell or otherwise issue securities at a price below \$2.00 per share or the then adjusted conversion price.

During the three months ended March 31, 2001, the Company issued an additional 110,000 shares of preferred stock and 550,000 warrants to purchase common stock. The Company allocated the net proceeds from the offering of \$1.1 million between the Series B Preferred Stock and the warrants based on estimated relative fair values. Accordingly, the stock was recorded at \$794,822, and the warrants were recorded at \$302,401. In connection with these additional Series B shares, the intrinsic value of the beneficial conversion feature of \$20,498 was reflected in the accompanying 2001 consolidated financial statements as a preferred stock dividend and as an increase to additional paid in capital. The Series B Preferred Stock Offering closed on April 13, 2001.

In May 2002 the Board of Directors approved a plan to modify the exercise price on certain Preferred Stock and promissory note-related warrants from \$2.50 to \$2.00 per share, extend the expiration date of certain warrants from December 31, 2002 to December 31, 2004, and amend the redemption provisions of certain warrants so that the warrants could be called for redemption when the market price for the Company's common stock is \$4.00 per share, rather than \$6.00 per share.

On December 6, 2002, Buyers United entered into the Asset Purchase Agreement and Software License Agreement to purchase certain assets and assume certain liabilities of I-Link, Inc., and its subsidiary, I-Link Communications, Inc. In consideration, Buyers United issued to I-Link 246,430 shares of Series B Convertible Preferred Stock with a fair market value of \$1.4 million, and agreed to issue an additional 53,570 shares of Series B Convertible Preferred Stock in equal monthly installments over a term of 10 months commencing June 1, 2003. The final installment was issued March 1, 2004.

During 2003, six of the stockholders converted a total of 116,000 Series B preferred shares into 580,000 common shares. During 2002, one of the stockholders converted 10,000 Series B preferred shares into 50,000 common shares.

Both Series A and B Preferred Stock still outstanding can be redeemed at the Company's election at any time commencing January 1, 2005, at the applicable redemption price plus all accrued dividends as of the redemption date.

Cumulative dividends accrue on both Series A and B Preferred Stock at the rate of 8% per annum from the date of original issue and are payable semi-annually on June 30 and December 31 of each year out of funds legally available for the payment of dividends. Dividends are payable in cash or common stock at the election of the Company. If paid in common stock, the number of shares issued will be based on the average of the closing bid prices for the common stock over the five trading days immediately prior to the dividend payment date. If the Company fails to pay any dividend within 60 days of its due date, the conversion price (see below) is adjusted downward by \$0.25 per share for each occurrence. During the years ended December 31, 2003 and 2002, the Company declared dividends aggregating \$873,495 and \$749,725, respectively, and to satisfy payment obligations, issued a total of 427,096 and 574,635 shares of common stock, respectively. As of December 31, 2003, the Company had accrued dividends payable in the amount of \$478,599. In February 2004, the Company settled the dividend payable by issuing 171,055 shares of common stock.

The Series A and B Preferred Stock has no voting rights, except as required by the General Corporation Laws of Delaware that require class votes on certain corporate matters and matters affecting the rights of the holders of the Preferred Stock. The Preferred Stock is senior in right of payment in the event of liquidation and with respect to dividends to the common stock and all other subsequent preferred stock issuances that may be authorized. The Series A Preferred Stock has a liquidation preference of \$2.00 per share and the Series B Preferred Stock has a liquidation preference of \$10.00 per share.

Issuances of Common Stock: During January 2002 the Company issued 17,998 shares of common stock in connection with the issuance of \$179,998 of promissory notes, at an aggregated fair market value of \$18,798.

During February 2002 the Company issued 25,000 shares of stock to one of its directors for providing a credit guaranty with respect to business expansion activities. The fair market value of shares issuances was \$30,750.

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In March 2001, the Company entered into three-year marketing contracts with one of its Series B Preferred stockholders. Under the terms of the contracts, 100,000 shares of common stock were issued with a fair market value of \$125,000. This amount was recorded on the balance sheet as a deferred consulting fee and included in operating expenses on a straight-line basis over the life of the contracts. During 2001, \$39,931 was recorded in promotion expenses as a result of this amortization. Consideration granted under the contracts' terms also included options to purchase up to 150,000 additional shares of common stock at \$2.50 per share. These options vest gradually over the term of the contract. These options are accounted for as variable plan options since the issuance of these options was under the premise that the grantee will be providing current and future services for the Company. Accordingly, using the Black-Scholes option pricing model, \$29,581 in consulting expense was recorded to reflect the vesting of these options through December 31, 2001. During 2002 an additional \$48,060 of deferred consulting fees were amortized and included in promotion expenses, and another \$95,615 in consulting expense was recorded to reflect the vesting of additional options. However, at the end of 2002 the Company and the stockholder agreed to cancel one of the marketing contracts and to rescind the as-yet unearned options. Accordingly, the Company included in promotion expenses an additional \$25,174 of remaining unamortized deferred consulting fees, and recorded income of \$125,197 to reflect the cancellation of the unearned options.

In January 2003 the Company issued 15,000 shares of stock to one of its directors for providing a credit guaranty to one of its wholesale telecommunication service providers. The fair market value of the stock was \$36,300.

During June 2003, the Company initiated a program to repurchase outstanding common stock from shareholders of record with total holdings of 100 or fewer shares. The offering price per share was \$1.75. The program ended in September 2003 after the Company had repurchased 2,774 shares.

Warrants to Purchase Common Shares: As mentioned above, the Company issued warrants in connection with its Series B preferred stock offering and in connection with certain marketing contracts.

In connection with some of the LMB-related unsecured promissory notes, two-year warrants to purchase a total 562,950 shares of common stock at \$2.50 per share were issued to the noteholders during the two years ended December 31, 2002. Warrants for an additional 97,950 shares were also issued to the sales agents. The estimated fair value of the warrants of \$264,717, based on using the Black-Scholes pricing model, was allocated to the warrants and recorded as a discount to the carrying value of the notes. The discount is being amortized to interest expense over the estimated term of the notes.

In November 2003 the Company issued 25,000 warrants to a consulting company. The estimated fair value of the warrants of \$25,341, based on using the Black-Scholes pricing model, will be amortized over the life of the contract into general and administrative expense.

During 2003, investors exercised warrants to purchase 522,500 shares of Common Stock, in exchange for proceeds which aggregated \$1,043,750.

All of the warrants were exercisable at December 31, 2003. The following tables summarize the warrant activity for 2003 and 2002:

	Warrants	Price Range	Weighted Average Exercise Price
	-----	-----	-----
Balance at December 31, 2001	5,345,732	\$1.25 - \$5.13	\$2.44
Cancelled or expired	(250,000)	\$2.50 - \$2.85	\$2.64
Issued	433,550	\$2.00 - \$2.50	\$2.01
	-----		
Balance at December 31, 2002	5,529,282	\$1.25 - \$2.95	\$2.00
Cancelled or expired	(181,750)	\$2.00 - \$2.95	\$2.49
Exercised	(522,500)	\$1.25 - \$2.50	\$2.00
Issued	25,000	\$2.50	\$2.50
	-----		
Balance at December 31, 2003	4,850,032	\$1.25 - \$2.50	\$2.05
	=====		

Long-Term Stock Incentive Plan: Effective March 11, 1999, the Company established the Buyers United International, Inc. Long-Term Stock Incentive Plan ("the Stock Plan"). The Stock Plan provides for a maximum of 1,200,000 shares of common stock of the Company to be awarded to participants and their beneficiaries. A Committee, as determined by the Board of Directors, determines and designates the eligible participants and awards to be granted under the Stock Plan. The Committee may grant incentive stock options; non-qualified options; stock appreciation rights ("SAR"); and on a limited basis, stock awards. The terms and exercise prices of options and SARs will be established by the Committee; except that the exercise prices cannot be less than 100 percent of the fair market value of a share of common stock on the date of grant. As of December 31, 2003, incentive stock options to purchase a total of 893,653 shares were outstanding.

Other Options: The Company's Board of Directors has from time to time also authorized the grant of stock options to directors, officers, key employees, and consultants as compensation and in connection with obtaining financing.

In virtually all cases, employee options vest over a period of from one to three years, and expire from four to five years after the date the options were granted. The following tables summarize the all stock option activity for 2003 and 2002:

	Options	Price Range	Weighted Average Exercise Price
	-----	-----	-----
Balance at December 31, 2001	2,818,585	\$2.00 - \$9.00	\$2.69
Granted	902,913	\$2.00 - \$2.50	\$2.31
Cancelled or expired	(128,777)	\$2.00 - \$9.00	\$3.11
	-----		
Balance at December 31, 2002	3,592,721	\$2.00 - \$5.39	\$2.58
Granted	683,500	\$2.00 - \$2.64	\$2.33
Exercised	(27,500)	2.00	\$2.00
Cancelled or expired	(816,944)	\$2.00 - \$4.00	\$2.20
	-----		
Balance at December 31, 2003	3,431,777	\$2.00 - \$5.39	\$2.62
	=====		

A summary of the options outstanding and options exercisable at December 31, 2003 is as follows:

Range of Exercise Prices	Options Outstanding		Options Exercisable		
	Options Outstanding	Average Remaining Contractual Life	Weighted Average Exercise Price	Options Exercisable at December 31, 2003	Weighted Average Exercise Price
\$2.00 - \$3.99	3,207,926	3.6 years	\$ 2.45	2,512,261	\$ 2.49
\$4.00 - \$5.39	223,851	2.3 years	5.13	223,851	5.13
	-----			-----	
	3,431,777	3.5 years	\$ 2.62	2,736,112	\$ 2.70
	=====			=====	

Registration Statement on Form SB-2: On September 10, 2003, the Company filed a registration statement on Form SB-2 with the Securities and Exchange Commission to register for resale up to 8,779,333 shares of Common Stock that may be sold from time to time by certain selling security holders listed in the registration statement. At December 31, 2003 the selling security holders owned:

- o Warrants to purchase 99,375 shares at a price of \$1.25 per share
- o Warrants to purchase 3,966,856 shares at a price of \$2.00 per share
- o Warrants to purchase 528,450 shares at a price of \$2.50 per share
- o Options to purchase 2,086,652 shares at prices ranging from \$2.00 to \$5.392 per share
- o Convertible notes in the amount of \$1,162,500 convertible at \$2.00 per share
- o Convertible notes in the amount of \$1,775,000 convertible at \$2.50 per share

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Buyers United will receive the proceeds from exercise of the warrants and options and will benefit from extinguishment of the debt represented by the convertible notes, but will not receive any proceeds or benefit from the resale of the shares by the selling security holders.

In March 2004 the registration statement was temporarily suspended until the Company can file an amendment updating the registration statement with its 2003 audited financial statements and other information.

#### **NOTE 11 - RELATED PARTY TRANSACTIONS**

During 2003 and 2002, certain board members and stockholders performed various services to the Company. These services included, but were not limited to, consulting, marketing and capital and debt raising activities. The Company incurred \$74,750 and \$109,259 in

fees associated with these services for the years ended December 31, 2003 and 2002, respectively. Amounts outstanding related to these services were \$12,800 and \$14,300 at December 31, 2003, and 2002, respectively. There are also several debt arrangements more fully described in Note 7. Interest expense on obligations owed to related parties during 2003 and 2002, respectively, was \$414,523 and \$453,361.

#### **NOTE 12 - MAJOR SUPPLIERS**

Approximately 70% and 80% of the Company's cost of revenue for the years ended December 31, 2003 and 2002, respectively, was generated from two telecommunication providers. As of December 31, 2003, the Company owed approximately \$3 million to these two providers. The Company has entered into contractual agreements with these vendors. During 2002 one of these providers had filed for bankruptcy protection under Chapter 11, and the other provider is currently being scrutinized by the Securities and Exchange Commission over certain accounting matters. Although the Company has not experienced a disruption of service and feels it could replace either of these sources with other wholesale telecommunication service providers, the effect on the Company's operations of potentially losing either or both of these service providers is unknown.

#### **NOTE 13 - COMMITMENTS AND CONTINGENCIES**

In June 2001, Buyers United entered into a joint sales agreement with Infotopia, Inc., a direct response marketer. In connection with the agreement, Infotopia loaned \$500,000 to Buyers United. Subsequent to entering into the sales agreement, the two companies decided not to pursue further any joint activity. In December 2001, Buyers United negotiated a settlement of the \$500,000 loan in which Buyers United paid \$120,000 and issued 35,000 shares of common stock in exchange for canceling the outstanding obligation plus \$25,921 in accrued interest. The stock had a fair market value of \$22,401. Accordingly, based on these amounts, the Company recorded a gain on the early extinguishments of the debt in the amount of \$383,520. However, unbeknownst to the Company, during 2001 Infotopia allegedly entered into a General Security Agreement with Sea Spray Holdings, Ltd., which purportedly included the loan obligation. Sea Spray asserted that it had a perfected security interest in the obligation and demanded payment as successor-in-interest to Infotopia. The Company denied the claim and filed an arbitration proceeding to resolve the issue. Sea Spray attempted to pursue its claim in New York state court, which the Company removed to federal court in New York, and the federal court dismissed the action pursuant to an order to the effect Sea Spray must pursue its claims in the arbitration proceeding. An arbitration hearing was held in December 2003, at which Sea Spray failed to make any appearance or submission after receiving all required notice. The arbitrator entered a default in favor of Buyers United and its award further found in favor of Buyers United as a matter of the evidence presented and as a matter of law. The Company believes this matter has been resolved fully in its favor and that it has no obligation or liability to Sea Spray.

Buyers United is the subject of certain other legal matters, which it considers incidental to its business activities. It is the opinion of management, after discussion with legal counsel, that the ultimate disposition of these other matters will not have a material impact on the financial position, liquidity or results of operations of Buyers United.

In connection with the MyACD agreements, MyACD will continue to provide enhanced service development and configuration, and Buyers United will reimburse MyACD for actual costs related to these activities.



**NOTE 14 - SUBSEQUENT EVENTS**

In January and February 2004, three Directors had exercised options to purchase a total of 255,000 shares of Common Stock. Total proceeds received by the Company in connection with these exercises was \$555,000.

During the first three months of 2004, investors have exercised warrants to purchase a total of 71,000 shares of Common Stock. Total proceeds received in these transactions was \$146,000.

In December 2003, a holder of 100,000 shares of Series B Convertible Preferred Stock converted all of those shares to 500,000 shares of common stock. In January 2004, the holder sold those common shares plus 14,560 additional shares, or a total of 514,560 shares, to Buyers United for \$500,000 in a privately negotiated transaction.

Buyers United entered into an agreement to purchase 37 dedicated long distance customers from Source Communications, LLC for \$750,000 in February 2004. Closing of the acquisition was subject to complying with applicable federal and state regulation pertaining to transfer of the customers. All of the regulatory requirements were satisfied and the acquisition of the customers is completed

On March 15, 2004 the Company closed a private placement to institutional and accredited investors. The Company sold 3,782,000 shares of common stock at \$2.30 per share, or a total of approximately \$8.7 million. Net proceeds of the offering after placement fees and expenses were approximately \$8.1 million. The net proceeds of the private placement are intended to be used for various corporate purposes, including sales and marketing related programs, to fund further development of our VoIP Network, reduction of debt, and for working capital and other general corporate purposes.

In connection with the placement, Acceris Communications Inc., formerly I-link Incorporated and the holder of 300,000 shares of Series B Convertible Preferred Stock, converted all of its preferred stock to 1.5 million common shares. Acceris subsequently sold 750,000 of those common shares to the investors in the private placement at \$2.30 per share. As a result of the conversion and sale, Acceris Communications now holds 808,546 shares of the Company's common stock, or approximately six percent of the 13 million shares of common stock outstanding following completion of the private placement.

The private placement was made only to institutional and accredited investors in a transaction exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"). The shares of common stock sold have not been registered under the Securities Act, or any state securities laws, and unless so registered, may not be offered or sold in the United States absent registration or an applicable exemption from the registration requirements of the Securities Act and applicable state securities laws. The Company has agreed to file a registration statement under the Securities Act for resale of the common stock purchased by the investors in the private placement, the 808,546 shares of common stock held by Acceris, and 164,125 shares of common stock issuable under a warrant granted to the placement agent.

Exhibit No. 3.1  
Form 10-KSB  
Buyers United, Inc.

State of Delaware  
Secretary of State  
Division of Corporations  
Filed 9:00 AM 03/15/1999  
991099477-3016691

**CERTIFICATE OF INCORPORATION  
OF**

**BUI, INC.  
ARTICLE I  
NAME**

**The name of the Corporation is BUI, Inc.**

**ARTICLE II  
REGISTERED OFFICE AND AGENT FOR SERVICE**

The address of the Corporation's registered office in the State of Delaware is in the county of New Castle, at 1013 Centre Road, Wilmington, Delaware 10805. The name of its registered agent at such address is Corporation Service Company.

**ARTICLE III  
CORPORATE PURPOSES**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

**ARTICLE IV  
CAPITAL STOCK**

1. Shares, Classes and Series Authorized.

The total number of shares of all classes of capital stock that the Corporation shall have authority to issue is 25,000,000 shares. Stockholders shall not have any preemptive rights, nor shall stockholders have the right to cumulative voting in the election of directors or for any other purpose. The classes and the aggregate number of shares of stock of each class that the Corporation shall have authority to issue are as follows:

- (a) 20,000,000 shares of Common Stock, \$0.0001 par value ("Common Stock").
- (b) 5,000,000 shares of Preferred Stock, \$0.0001 par value ("Preferred Stock").

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## 2. Powers and Rights of the Preferred Stock.

The Preferred Stock may be issued from time to time in one or more series, with such distinctive serial designations as may be stated or expressed in the resolution or resolutions providing for the issue of such stock adopted from time to time by the Board of Directors; and in such resolution or resolutions providing for the issuance of shares of each particular series, the Board of Directors is also expressly authorized to fix: the right to vote, if any; the consideration for which the shares of such series are to be issued; the number of shares constituting such series, which number may be increased (except as otherwise fixed by the Board of Directors) or decreased (but not below the number of shares thereof then outstanding) from time to time by action of the Board of Directors; the rate of dividends upon which and the times at which dividends on shares of such series shall be payable and the preference, if any, which such dividends shall have relative to dividends on shares of any other class or classes or any other series of stock of the Corporation; whether such dividends shall be cumulative or noncumulative, and if cumulative, the date or dates from which dividends on shares of such series shall be cumulative; the rights, if any, which the holders of shares of such series shall have in the event of any voluntary or involuntary liquidation, merger, consolidation, distribution or sale of assets, dissolution or winding up of the affairs of the Corporation; the rights, if any, which the holders of shares of such series shall have to convert such shares into or exchange such shares for shares of any other class or classes or any other series of stock of the Corporation or for any debt securities of the Corporation and the terms and conditions, including price and rate of exchange, of such conversion or exchange; whether shares of such series shall be subject to redemption, and the redemption price or prices and other terms of redemption, if any, for shares of such series including, without limitation, a redemption price or prices payable in shares of Common Stock; the terms and amounts of any sinking fund for the purchase or redemption of shares of such series; and any and all other designations, preferences, and relative, participating, optional or other special rights, qualifications, limitations or restrictions thereof pertaining to shares of such series' permitted by law.

## 3. Issuance of the Common Stock and the Preferred Stock.

The Board of Directors of the Corporation may from time to time authorize by resolution the issuance of any or all shares of the Common Stock and the Preferred Stock herein authorized in accordance with the terms and conditions set forth in this Certificate of Incorporation for such purposes, in such amounts, to such persons, corporations or entities, for such consideration, and in the case of the Preferred Stock, in one or more series, all as the Board of Directors in its discretion may determine and without any vote or other

action by the stockholders, except as otherwise required by law. The capital stock, after the amount of the subscription price, or par value, has been paid in shall not be subject to assessment to pay the debts of the Corporation.

## **ARTICLE V BOARD OF DIRECTORS**

The governing board of the Corporation shall be known as directors, and the number of directors may from time to time be increased or decreased in such manner as shall be provided by the Bylaws of the Corporation, provided that the

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number of directors may not be less than one nor more than fifteen. Effective upon filing of this Certificate, the members of the board of directors, consisting of three persons, shall be as follows:

Rod Smith	66 E. Wadsworth Park Dr., Suite 101 Draper, Utah 84020
C. Douglas Smith	66 E. Wadsworth Park Dr., Suite 101 Draper, Utah 84020
Daniel R. Ainge	66 E. Wadsworth Park Dr., Suite 101 Draper, Utah 84020

## **ARTICLE VI POWERS OF BOARD OF DIRECTORS**

The property and business of the Corporation shall be controlled and managed by or under the direction of its Board of Directors. In furtherance, and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized:

1. To make, alter, amend or repeal the Bylaws of the Corporation; provided, that no adoption, amendment, or repeal of the Bylaws shall invalidate any act of the board of directors that would have been valid prior to such adoption, amendment, or repeal;
2. To determine the rights, powers, duties, rules and procedures that affect the power of the board of directors to manage and direct the property, business, and affairs of the Corporation, including the power to designate and empower committees of the board of directors, to elect, appoint and empower the officers and other agents of the Corporation, and to determine the time and place of, and the notice requirements for board meetings, as well as the manner of taking board action; and

3. To exercise all such powers and do all such acts as may be exercised by the Corporation, subject to the provisions of the laws of the State of Delaware, this Certificate of Incorporation, and the Bylaws of the Corporation.

## **ARTICLE VII INDEMNIFICATION**

The Corporation shall indemnify and may advance expenses to its officers and directors to the fullest extent permitted by law in existence either now or hereafter.

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## **ARTICLE VIII LIMITATION ON PERSONAL LIABILITY FOR DIRECTORS**

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of a fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended hereafter to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

Any repeal or modification of the foregoing paragraph by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

## **ARTICLE IX CERTIFICATE SUBJECT TO AMENDMENT**

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute or by the Certificate of Incorporation, and except as otherwise provided by this Certificate of Incorporation, all rights conferred upon stockholders herein are granted subject to this reservation.

## **ARTICLE X INCORPORATOR**

The sole incorporator of the Corporation is:

Rod Smith 66 E. Wadsworth Park Dr., Suite 101 Draper, Utah 84020

IN WITNESS WHEREOF, the undersigned, acting as the sole incorporator of the Corporation, signs this Certificate of Incorporation as his act and deed this 11th day of March, 1999.

*/s/ Rod Smith*

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State of Delaware  
Secretary of State  
Division of Corporations  
Filed 9:00 AM 04/19/2000  
001201588-3016691

**CERTIFICATE OF AMENDMENT OF  
CERTIFICATE OF INCORPORATION OF  
BUI, INC.**

(Changing its name to "BuyersOnline.com, Inc.")

BUI, INC., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

The amendment to the Corporation's Certificate of Incorporation set forth below was duly adopted by resolutions approved by the Corporation's Board of Directors and stockholders in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware:

Amendment. The Certificate of Incorporation of the corporation is amended by striking Article I in its entirety and replacing therefor:

**ARTICLE I  
NAME**

**The name of the Corporation is BuyersOnline.com, Inc.**

IN WITNESS WHEREOF, BUI, Inc. has caused this Certificate to be signed by its duly authorized officer this 30th day of March, 2000.

**BUI, Inc.**

*By: /s/ Rod Smith, President*

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State of Delaware Secretary of State Division of Corporations Filed 9:00 AM 10/24/2000 001535267-3016691

**CERTIFICATE OF AMENDMENT OF  
CERTIFICATE OF INCORPORATION OF  
BUYERSONLINE.COM, INC.**

BuyersOnline.com, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

The amendment to the Corporation's Certificate of Incorporation set forth below was duly adopted by resolutions approved by the Corporation's Board of Directors and stockholders in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware:

Amendment. The Certificate of Incorporation of the corporation is amended by striking Section 1 of Article IV in its entirety and replacing therefor:

1. Shares, Classes and Series Authorized.

The total number of shares of all classes of capital stock that the Corporation shall have authority to issue is 105,000,000 shares. Stockholders shall not have any preemptive rights, nor shall stockholders have the right to cumulative voting in the election of directors or for any other purpose. The classes and the aggregate number of shares of stock of each class that the Corporation shall have authority to issue are as follows:

(a) 100,000,000 shares of Common Stock, \$0.0001 par value ("Common Stock").

(b) 5,000,000 shares of Preferred Stock, \$0.0001 par value ("Preferred Stock").

IN WITNESS WHEREOF, BuyersOnline.com, Inc., has caused this Certificate to be signed by its duly authorized officer this 24th day of October, 2000.

**BUYERSONLINE.COM, INC.**

*By: /s/ Paul Jarman, Vice President*

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State of Delaware  
Secretary of State  
Division of Corporations  
Filed 9:00 AM 11/01/2001  
010549267-3016691

**CERTIFICATE OF AMENDMENT OF  
CERTIFICATE OF INCORPORATION OF  
BUYERSONLINE.COM, INC.**

BuyersOnline.com, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

The amendment to the Corporation's Certificate of Incorporation set forth below was duly adopted by resolutions approved by the Corporation's Board of Directors and stockholders in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware. The amendments will be effective as of 12:01 am Eastern Time on November 20, 2001.

Amendment No. 1. The Certificate of Incorporation of the corporation is amended by striking Article I in its entirety and replacing there for:

**ARTICLE I  
NAME**

**The name of the Corporation is Buyers United, Inc.**

Amendment No. 2. The Certificate of Incorporation of the corporation is amended by striking Section 1 of Article IV in its entirety and replacing there for:

**1. Shares, Classes and Series Authorized.**

The total number of shares of all classes of capital stock that the Corporation shall have authority to issue is 115,000,000 shares. Stockholders shall not have any preemptive rights, nor shall stockholders have the right to cumulative voting in the election of directors or for any other purpose. The classes and the aggregate number of shares of stock of each class that the Corporation shall have authority to issue are as follows:



(a) 100,000,000 shares of Common Stock, \$0.0001 par value ("Common Stock").

(b) 15,000,000 shares of Preferred Stock, \$0.0001 par value ("Preferred Stock").

IN WITNESS WHEREOF, BuyersOnline.com, Inc., has caused this Certificate to be signed by its duly authorized officer this 31st day of October 2001.

**BUYERSONLINE.COM, INC.**

*By: /s/ Paul Jarman, Vice President*

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Exhibit 14.1  
Form 10-KSB  
Buyers United, Inc.

**BUYERS UNITED, INC.**

**CODE OF ETHICS FOR PRINCIPAL EXECUTIVE AND SENIOR FINANCIAL OFFICERS**

**I. INTRODUCTION**

This Code of Ethics for Principal Executive and Senior Financial Officers (the "Code") helps maintain the standards of business conduct for Buyers United, Inc. (the "Company"), and ensures compliance with legal requirements, specifically Section 406 of the Sarbanes-Oxley Act of 2002, and the SEC rules promulgated there under. The purpose of the Code is to deter wrongdoing and promote ethical conduct. The matters covered in this Code are of the utmost importance to the Company, our shareholders and our business partners. Further, these are essential so that we can conduct our business in accordance with our business values.

The Code is applicable to the following persons, referred to as Officers:

- o Our principal executive officer,
- o Our principal financial officer,
- o Our principal accounting officer or controller, and

o All professionals serving in the roles of finance, tax, accounting, purchase, treasury, internal audit, financial analyst and investor relations. Further, this includes all members of the senior management, the members of the Audit Committee, and members of the Board of Buyers United and its subsidiaries.

Ethical business conduct is critical to our business. Accordingly, Officers are expected to read and understand this Code, uphold these standards in day-to-day activities, and comply with: all applicable laws; rules and regulations; any code of conduct the Company may adopt from time to time; and all applicable policies and procedures adopted by the Company that govern the conduct of its employees.

Because the principles described in this Code are general in nature, questions about specific matters or issues should be directed to either the President or Chief Financial Officer of the Company. If the President or Chief Financial Officer have questions about specific matters or issues, they should direct their inquiry to the Chairman of the Company's Audit Committee.

Nothing in this Code, in any Company policies and procedures, or in other related communications (verbal or written), creates or implies an employment contract or term of employment.

Officers should sign the acknowledgment form at the end of this Code and return the form to the HR department indicating that they have received, read and understood, and agree to comply with the Code. The signed acknowledgment

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form will be located in each Officer's personnel files. Each year, as part of their annual review, Officers will be asked to sign an acknowledgment indicating their continued understanding of the Code.

## **II. HONEST AND ETHICAL CONDUCT**

We expect all Officers to act in accordance with the highest standards of personal and professional integrity, honesty and ethical conduct, while working on the Company's premises, at offsite locations where the Company's business is being conducted, at Company sponsored business and social events, or at any other place where Officers are representing the Company.

We consider honest conduct to be conduct that is free from fraud or deception. We consider ethical conduct to be conduct conforming to the accepted professional standards of conduct. Ethical conduct includes the ethical handling of actual or apparent conflicts of interest between personal and professional relationships. This is discussed in more detail in Section III below.

In all cases, if you are unsure about the appropriateness of an event or action, please seek assistance in interpreting the requirements of these practices.

## **III. CONFLICTS OF INTEREST**

An Officer's duty to the Company demands that he or she avoids and discloses actual and apparent conflicts of interest. A conflict of interest exists where the interests or benefits of one person or entity conflict with the interests or benefits of the Company. Examples include:

A. Employment/ Outside Employment. In consideration of employment with the Company, Officers who are full time employees are expected to devote their full attention to the business interests of the Company. Such Officers are prohibited from engaging in any activity that interferes with their performance or responsibilities to the Company, or is otherwise in conflict with or prejudicial to the Company.

Our policy is to prohibit Officers from accepting simultaneous employment with suppliers, customers, developers or competitors of the Company, or from taking part in any activity that enhances or supports a competitor's position. Additionally, Officers must disclose to the Company's Audit Committee, any interest that they have that may conflict with the business of the Company.

B. Outside Directorships. It is a conflict of interest to serve as a director of any company that competes with the Company. Officers must first obtain approval from the Company's Audit Committee before accepting a directorship.

C. Business Interests. If an Officer is considering investing in any customer, supplier, developer or competitor of the Company, he or she must first take care to ensure that these investments do not compromise their responsibilities to the Company. It is our policy that Officers first obtain approval from the Company's Audit Committee before making such an investment. Many factors should be considered in determining whether a conflict exists, including the size and nature of the investment; the Officer's ability to

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influence the Company's decisions; his or her access to confidential information of the Company or of the other company; and the nature of the relationship between the Company and the other company.

D. Related Parties. As a general rule, Officers should avoid conducting Company business with a relative, or with a business in which a relative is associated in any significant role. Relatives include spouse, siblings, children, parents, grandparents, grandchildren, aunts, uncles, nieces, nephews, cousins, step relationships, and in-laws. The Company discourages the employment of relatives of Officers in positions or assignments within the same department. Further, the Company prohibits the employment of such individuals in positions that have a financial dependence or influence (e.g., an auditing or control relationship, or a supervisor/ subordinate relationship).

E. Payments or Gifts From Others. Under no circumstances may Officers accept any offer, payment, promise to pay, or authorization to pay any money, gift, or anything of value from customers, vendors, consultants, etc., that is perceived as intended, directly or indirectly, to influence any business decision, any act or failure to act, any commitment of fraud, or opportunity for the commitment of any fraud. Inexpensive gifts, infrequent business meals, celebratory events and entertainment, provided that they are not excessive or create an appearance of impropriety, do not violate this policy. Before accepting anything of value from an employee of a government entity, please contact the President or Chief Financial Officer or, in the case of the President or Chief Financial Officer, the Chairman of the Audit Committee. Questions regarding whether a particular payment or gift violates this policy are to be directed to President or

Chief Financial Officer or, in the case of the President or Chief Financial Officer, the Chairman of the Audit Committee. Gifts given by the Company to suppliers or customers, or received from suppliers or customers, should be appropriate to the circumstances and should never be of a kind that could create an appearance of impropriety. The nature and cost must always be accurately recorded in the Company's books and records.

F. Corporate Opportunities. Officers may not exploit for their own personal gain, opportunities that are discovered through the use of corporate property, information or position, unless the opportunity is disclosed fully in writing to the Company's Board of Directors and the Board declines to pursue such opportunity.

G. Other Situations. Because other conflicts of interest may arise, it would be impractical to attempt to list all possible situations. If a proposed transaction or situation raises any questions or doubts, Officers must consult President or Chief Financial Officer or, in the case of the President or Chief Financial Officer, the Chairman of the Audit Committee. .

#### **IV. DISCLOSURE TO THE SEC AND THE PUBLIC**

Our policy is to provide full, fair, accurate, timely, and understandable disclosure in reports and documents that we file with, or submit to, the SEC and in our other public communications. Accordingly, our Officers must ensure that they and others in the Company comply with our disclosure controls and procedures, and our internal controls for financial reporting.

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#### **V. COMPLIANCE WITH GOVERNMENTAL LAWS, RULES AND REGULATIONS**

Officers must comply with all applicable governmental laws, rules and regulations. Officers must acquire appropriate knowledge of the legal requirements relating to their duties sufficient to enable them to recognize potential dangers, and to know when to seek advice from more senior Officers or the Audit Committee. Violations of applicable governmental laws, rules and regulations may subject Officers to individual criminal or civil liability, as well as to disciplinary action by the Company. Such individual violations may also subject the Company to civil or criminal liability or the loss of business.

#### **VI. VIOLATIONS OF THE CODE**

Part of an Officer's job, and of his or her ethical responsibility, is to help enforce this Code. Officers should be alert to possible violations and report this to President or Chief Financial Officer or, in the case of the President or Chief Financial Officer, the Chairman of the Audit Committee. Officers must cooperate in any internal or external investigations of possible violations. Reprisal, threat, retribution or retaliation against any person who has, in good faith, reported a violation or a suspected violation of law, this Code or other Company policies, or against any person who is assisting in any investigation or process with respect to such a violation, is prohibited.

Actual violations of law, this Code, or other Company policies or procedures, should be promptly reported to President or Chief Financial Officer or, in the case of the President or Chief Financial Officer, the Chairman of the Audit Committee.

The Company will take appropriate action against any Officer whose actions are found to violate the Code or any other policy of the Company. Disciplinary actions may include immediate termination of employment at the Company's sole discretion. Where the Company has suffered a loss, it may pursue its remedies against the individuals or entities responsible. Where laws have been violated, the Company will cooperate fully with the appropriate authorities.

## **VII. WAIVERS AND AMENDMENTS OF THE CODE**

We are committed to continuously reviewing and updating our policies and procedures. Therefore, this Code is subject to modification. Any amendment or waiver of any provision of this Code must be approved in writing by the Company's Board of Directors and promptly disclosed on the Company's website and in applicable regulatory filings pursuant to applicable laws and regulations, together with details about the nature of the amendment or waiver.

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## **VIII. ACKNOWLEDGMENT OF RECEIPT OF CODE OF ETHICS FOR PRINCIPAL EXECUTIVE AND SENIOR FINANCIAL OFFICERS**

I have received and read the Company's Code of Ethics for Principal Executive and Senior Financial Officers (the "Code"). I understand the standards and policies contained in the Code and understand that there may be additional policies or laws specific to my job. I agree to comply with the Code.

If I have questions concerning the meaning or application of the Code, any Company policies, or the legal and regulatory requirements applicable to my job, I know I can consult the President or Chief Financial Officer or, in the case of the President or Chief Financial Officer, the Chairman of the Audit Committee, and that my questions or reports to these sources will be maintained in confidence.

\_\_\_\_\_  
**Officer Name**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

Please sign and return this form to the HR department.

Exhibit No. 21.1  
Buyers United, Inc.  
Form 10-KSB  
File No. 0-26917

### **SUBSIDIARIES OF THE COMPANY**

Name State or Jurisdiction

**Buyers United, Inc. - Virginia Virginia**

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Exhibit No. 31.1  
Form 10-KSB  
Buyers United, Inc.  
File No. 0-26917

### **Certification**

I, Theodore Stern, certify that:

1. I have reviewed this annual report on Form 10-KSB for the year ended December 31, 2003 of Buyers United, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the small business issuer as of, and for, the periods presented in this report;
4. The small business issuer's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the small business issuer and have:

- (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the small business issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the small business issuer's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the small business issuer's internal control over financial reporting that occurred during the small business issuer's most recent fiscal quarter (the small business issuer's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the small business issuer's internal control over financial reporting; and
5. The small business issuer's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the small business issuer's auditors and the audit committee of the small business issuer's board of directors (or persons performing the equivalent functions):
- (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the small business issuer's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the small business issuer's internal control over financial reporting.

*Date: March 29, 2004*

*By: /s/ Theodore Stern  
Chief Executive Officer*

### **Certification**

I, David R. Grow, certify that:

1. I have reviewed this annual report on Form 10-KSB for the year ended December 31, 2003 of Buyers United, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the small business issuer as of, and for, the periods presented in this report;
4. The small business issuer's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the small business issuer and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the small business issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the small business issuer's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the small business issuer's internal control over financial reporting that occurred during the small business issuer's most recent fiscal quarter (the small business issuer's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the small business issuer's internal control over financial reporting; and



5. The small business issuer's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the small business issuer's auditors and the audit committee of the small business issuer's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the small business issuer's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the small business issuer's internal control over financial reporting.

*Date: March 29, 2004*

*By: /s/ David R. Grow  
Chief Financial Officer*

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Exhibit No. 32.1  
Form 10-KSB  
Buyers United, Inc.  
File No. 0-26917

Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to  
Section 906 of the Sarbanes-Oxley Act of 2002.

In connection with the Annual Report of Buyers United, Inc. (the "Company") on Form 10-KSB for the period ending December 31, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Theodore Stern, Chief Executive Officer of the Company, certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that: (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

*Date: March 29, 2004*

*By: /s/ Theodore Stern  
Chief Executive Officer*

Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to  
Section 906 of the Sarbanes-Oxley Act of 2002.

In connection with the Annual Report of Buyers United, Inc. (the "Company") on Form 10-KSB for the period ending December 31, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, David R. Grow, Chief Financial Officer of the Company, certify pursuant to 18 U.S.C.

Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that: (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

*Date: March 29, 2004*

*By: /s/ David R. Grow  
Chief Financial Officer*

A signed original of this written statement required by Section 906 has been provided to Buyers United, Inc. and will be retained by Buyers United, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

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End of Filing



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EXHIBIT E

Proposed Tariff

**South Carolina**  
**LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES TARIFF**  
**OF**  
**UCN, Inc.**

This Tariff contains the descriptions, regulations and rates applicable to the provision of local exchange telecommunications services provided by UCN, Inc., with principal offices located at 14870 South Pony Express Road, Bluffdale, Utah 84065, for services furnished within the State of South Carolina. This tariff is on file with the South Carolina Public Service Commission. and copies may be inspected, during normal business hours, at the Company's principal place of business.

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Issued:

Effective:

Issued by:

Paul Jarman  
President/CEO  
14870 South Pony Express Road  
Bluffdale, Utah 84065

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Bluffdale, Utah 84065

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**CHECK SHEET**

Section	Page	Revision	Section	Page	Revision	Section	Page	Revision
Title	Title	Original*	Section 3	1	Original*			
Preface	1	Original*	Section 3	2	Original*			
Preface	2	Original*	Section 3	3	Original*			
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Preface	4	Original*	Section 4	4	Original*			
Preface	5	Original*	Section 4	2	Original*			
Section 1	1	Original*	Section 4	3	Original*			
Section 1	2	Original*	Section 4	4	Original*			
Section 1	3	Original*	Section 5	1	Original*			
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Section 2	7	Original*	Section 5	8	Original*			
Section 2	8	Original*	Section 5	9	Original*			
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Section 2	11	Original*	Section 5	12	Original*			
Section 2	12	Original*	Section 5	13	Original*			
Section 2	13	Original*	Section 5	14	Original*			
Section 2	14	Original*	Section 5	15	Original*			
Section 2	15	Original*	Section 5	16	Original*			
Section 2	16	Original*	Section 5	17	Original*			
Section 2	17	Original*	Section 5	18	Original*			
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Section 2	31	Original*						

\*Denotes New or Revised Page.

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 President/CEO  
 14870 South Pony Express Road  
 Bluffdale, Utah 84065

### EXPLANATION OF SYMBOLS

The following symbols shall be used in this Tariff for the purpose indicated below:

- (C) To signify changed regulation.
- (D) To signify discontinued rate or regulation.
- (I) To signify increased rate.
- (M) To signify a move in the location of text.
- (N) To signify new rate or regulation.
- (R) To signify reduced rate.
- (S) To signify reissued matter.
- (T) To signify a change in text but no change in rate or regulation.

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Issued:

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President/CEO  
14870 South Pony Express Road  
Bluffdale, Utah 84065

**APPLICATION OF TARIFF**

This Tariff contains the regulations, rates and charges applicable to the provision of competitive local telecommunications services by UCN, Inc. ("Company"), for the use of Customers in transmitting messages within the State of South Carolina, subject to the jurisdiction of the South Carolina Public Service Commission ("Commission"). Services include, but are not limited to resold and facilities-based voice service within the State of South Carolina. Company's Services are furnished subject to the availability of facilities and subject to the terms and conditions of this Tariff.

The rates and regulations contained in this Tariff apply only to the services furnished by Company and do not apply, unless otherwise specified, to the lines, facilities, or service provided by a local exchange telephone company or other common carrier for use in accessing the services of Carrier.

This tariff is on file with the South Carolina Public Service. In addition, this tariff is available for review at the main office of UCN, Inc., at 14870 South Pony Express Road, Bluffdale, Utah 84065.

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**TARIFF FORMAT**

A. Page Numbering – Page numbers appear in the upper right corner of the page. Pages are numbered sequentially. However, new pages are occasionally added to the Tariff. When a new page is added between pages already in effect, a decimal is added. For example, a new page added between pages 14 and 15 would be 14.1.

B. Page Revision Numbers – Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current page version on file with the South Carolina Public Service Commission. For example, the 4th revised Page 14 cancels the 3rd revised Page 14. Because of various suspension periods, deferrals, etc., the most current page number on file with the South Carolina Public Service Commission is not always the Tariff page in effect. Consult the Check Sheet for the page currently in effect.

C. Paragraph Numbering Sequence – There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level:

2.  
2.1.  
2.1.1.  
2.1.1.A.  
2.1.1.A.1.  
2.1.1.A.1.(a).  
2.1.1.A.1.(a).I.  
2.1.1.A.1.(a).I.(i).  
2.1.1.A.1.(a).I.(i).(1).

D. Check Sheets – When a Tariff filing is made with the South Carolina Public Service Commission, an updated Check Sheet accompanies the Tariff filing. The Check Sheet lists the pages contained in the Tariff, with a cross reference to the current revision number. When new pages are added, the Check Sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (\*). There will be no other symbols used on this page if these are the only changes made to it (i.e., the format, etc., remain the same, just revised revision levels on some pages). The Tariff user should refer to the latest Check Sheet to find out if a particular page is the most current on file with the South Carolina Public Service Commission.

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**SECTION 1 – DEFINITIONS**

**Access Line** – An arrangement from a local exchange telephone company or other common carrier, using either dedicated or switched access, which connects a Customer's location to Carrier's location or switching center.

**Account** – A Company accounting category containing up to two (2) residential local exchange access lines billed to the same Customer at the same address. The second or non-primary local exchange access line will share any call allowance of the primary local exchange access line. The second or non-primary local exchange access line, therefore, will not be provisioned to include a separate call allowance structure. No features are provided with the second or non-primary local exchange access line.

**Account Codes** – Permits Centrex Stations and attendants to dial an account code number of up to eight digits. For use when placing calls over facilities arranged for Automatic Message Accounting (AMA) recording. The account or project number must be input prior to dialing the called number.

**Advance Payment** – Part or all of a payment required before the start of service.

**Authorization Code** – A numerical code, one or more of which may be assigned to a Customer, to enable Carrier to identify the origin of service of the Customer so it may rate and bill the call. All authorization codes shall be the sole property of Carrier and no Customer shall have any property or any other right or interest in the use of any particular authorization code. Automatic numbering identification (ANI) may be used as or in connection with the authorization code.

**Authorized User** – A person, firm or corporation authorized by the Customer to be an end-user of the service of the Customer.

**Automatic Numbering Identification (ANI)** – A type of signaling provided by a local telephone company which automatically identifies the local exchange line from which a call originates.

**Commission** – Refers to the South Carolina Public Service Commission, unless otherwise indicated.

**Common Carrier** – An authorized company or entity providing telecommunications services to the public.

**Company** – UCN, Inc., the issuer of this Tariff.

**Customer** – The person, firm or corporation that orders service and is responsible for payment of charges and compliance with the terms and conditions of this Tariff.

**Customer Premises** – A location designated by the Customer for the purposes of connecting to the Company's services.

**Customer Terminal Equipment** – Terminal equipment provided by the Customer.

**Deposit** – Refers to a cash or equivalent of cash security held as a guarantee for payment of the charges.

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**SECTION 1 – DEFINITIONS (CONT'D)**

End Office – The LEC switching system office or serving wire center where Customer station loops are terminated for purposes of interconnection to each other and/or to trunks.

Equal Access – A form of dialed access provided by local exchange companies whereby interexchange calls dialed by the Customer are automatically routed to the Company's network. Presubscribed Customers may also route interexchange calls to the Company's network by dialing an access code supplied by the Company.

Exchange Telephone Company or Telephone Company – Denotes any individual, partnership, association, joint-stock company, trust, or corporation authorized by the appropriate regulatory bodies to engage in providing public switched communication service throughout an exchange area, and between exchange areas within the LATA.

ICB – Individual Case Basis.

IXC or Interexchange Carrier – A long distance telecommunications service provider.

Interruption – The inability to complete calls due to equipment malfunctions or human errors. Interruption shall not include, and no allowance shall be given for service difficulties such as slow dial tone, circuits busy or other network and/or switching capability shortages. Nor shall Interruption include the failure of any service or facilities provided by a common carrier or other entity other than the Carrier. Any interruption allowance provided within this Tariff by Carrier shall not apply where service is interrupted by the negligence or willful act of the Customer, or where the Carrier, pursuant to the terms of this Tariff, terminates service because of non-payment of bills, unlawful or improper use of the Carrier's facilities or service, or any other reason covered by this Tariff or by applicable law.

LATA – A Local Access and Transport Area established pursuant to the Modification of Final Judgment entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192; or any other geographic area designed as a LATA in the National Exchange Carrier Association, Inc. Tariff F.C.C. No. 4, or its successor Tariff(s).

LEC – Local Exchange Company refers to the dominant, monopoly local telephone company in the area also served by the Company.

UCN, Inc. – UCN, Inc., issuer of this Tariff.

Monthly Recurring Charges – The monthly charges to the Customer for services, facilities and equipment, which continue for the agreed upon duration of the service.

MOU – Minutes of Use.

NECA – National Exchange Carriers Association.

Non-Recurring Charge ("NRC") – The initial charge, usually assessed on a one-time basis, to initiate and establish service.

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**SECTION 1 – DEFINITIONS (CONT'D)**

PBX – Private Branch Exchange.

PIN – Personal Identification Number. See Authorization Code.

Point of Presence (“POP”) – Location where the Company maintains a facility for purposes of interconnecting to the Company's Network.

PSC – Refers to the South Carolina Public Service Commission.

Recurring Charges – Monthly charges to the Customer for services, and equipment, which continues for the agreed-upon duration of the service.

Service – Any means of service offered herein or any combination thereof.

Service Order – The written request for Company services executed by the Customer and the Company in the format devised by the Company. The signing of a Service Order Form by the Customer and acceptance by the Company initiates the respective obligations of the parties as set forth therein and pursuant to this Tariff.

Serving Wire Center – A specified geographic point from which the vertical and horizontal coordinate is used in calculation of airline mileage.

Shared Inbound Calls – Refers to calls that are terminated via the Customer's Company-provided local exchange line.

Shared Outbound Calls – Refers to calls in Feature Group (FGD) exchanges whereby the Customer's local telephone lines are presubscribed by the Company to the Company's outbound service such that “1 + 10-digit number” calls are automatically routed to the Company's or an IXC's network. Calls to stations within the Customer's LATA may be placed by dialing “10XXX” or 101XXXX” with a “1+10-digit number.”

Station – The network control signaling unit and any other equipment provided at the Customer's premises which enables the Customer to establish communications connections and to effect communications through such connections.

Subscriber – The person, firm, partnership, corporation, or other entity who orders telecommunications service from UCN, Inc.. Service may be ordered by, or on behalf of, those who own, lease or otherwise manage the pay telephone, PBX, or other switch vehicle from which an End User places a call utilizing the services of the Company.

Switched Access Origination/Termination – Where access between the Customer and the interexchange carrier is provided on local exchange company Feature Group circuits and the connection to the Customer is a LEC-provided business or residential access line. The cost of switched Feature Group access is billed to the interexchange carrier.

Terminal Equipment – Any telecommunications equipment other than the transmission or receiving equipment installed at a Company location.

Usage Charges – Charges for minutes or messages traversing over local exchange facilities.

User or End User – A Customer, Joint User or any other person authorized by a Customer to use service provided under this Tariff.

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14870 South Pony Express Road  
Bluffdale, Utah 84065

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**SECTION 2 – RULES AND REGULATIONS****2.1 Undertaking of the Company****2.1.1 Scope**

The Company undertakes to furnish communications service pursuant to the terms of this Tariff in connection with one-way and/or two-way information transmission between points within the State of South Carolina.

The Company is responsible under this Tariff only for the services and facilities provided hereunder, and it assumes no responsibility for any service provided by any other entity that purchases access to the Company network in order to originate or terminate its own services, or to communicate with its own customers.

**2.1.2 Shortage of Equipment or Facilities**

- A.** The Company reserves the right to limit or to allocate the use of existing facilities, or of additional facilities offered by the Company, when necessary because of lack of facilities, or due to some other cause beyond the Company's control.
- B.** The furnishing of service under this Tariff is subject to the availability on a continuing basis of all the necessary facilities and is limited to the capacity of the Company's facilities as well as facilities the Company may obtain from other carriers to furnish service from time to time as required at the sole discretion of the Company.

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Issued:

Effective:

Issued by:

Paul Jarman  
President/CEO  
14870 South Pony Express Road  
Bluffdale, Utah 84065

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.1 Undertaking of the Company (Cont'd)****2.1.3 Terms and Conditions**

- A. Service is provided on the basis of a minimum period of at least thirty (30) days, 24 hours per day. For the purpose of computing charges in this Tariff, a month is considered to have 30 days.
- B. Except as otherwise stated in this Tariff, Customers may be required to enter into written service orders which shall contain or reference a specific description of the service ordered, the rates to be charged, the duration of the services, and the terms and conditions in this Tariff. Customers will also be required to execute any other documents as may be reasonably requested by the Company.
- C. At the expiration of the initial term specified in each Service Order, or in any extension thereof, service shall continue on a month-to-month basis at the then current rates unless terminated by either party upon notice. Any termination shall not relieve the Customer of its obligation to pay any charges incurred under the service order and this Tariff prior to termination. The rights and obligations which by their nature extend beyond the termination of the term of the service order shall survive such termination.
- D. In any action between the parties to enforce any provision of this Tariff, the prevailing party shall be entitled to recover its legal fees and court costs from the non-prevailing party in addition to other relief a court may award.
- E. Service may be terminated upon written notice to the Customer if:
  - 1. the Customer is using the service in violation of the Tariff; or
  - 2. the Customer is using the service in violation of the law.
- F. This Tariff shall be interpreted and governed by the laws of the State of South Carolina regardless of its choice of laws provision.
- G. Any other Telephone Company may not interfere with the right of any person or entity to obtain service directly from the Company. No person or entity shall be required to make any payment, incur any penalty, monetary or otherwise, or purchase any services in order to have the right to obtain service directly from the Company.
- H. To the extent that either the Company or any other telephone company exercises control over available cable pairs, conduit, duct space, raceways, or other facilities needed by the other to reach a person or entity, the party exercising such control shall make them available to the other on terms equivalent to those under which the Company makes similar facilities under its control available to its customers. At the reasonable request of either party, the Company and the other telephone company shall join the attempt to obtain from the owner of the property access for the other party to serve a person or entity.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.1 Undertaking of the Company (Cont'd)****2.1.4 Limitations on Liability**

- A. Except as otherwise stated in this section, the liability of the Company for damages arising out of either: (1) the furnishing of its services, including but not limited to mistakes, omissions, interruptions, delays or errors, or other defects, representations, or use of these services; or (2) the failure to furnish its service, whether caused by acts or omission, shall be limited to the extension of allowances to the Customer for interruptions in service as set forth in Section 2.6.
- B. Except for the extension of allowances to the customer for interruptions in service as set forth in Section 2.6, the Company shall not be liable to a Customer or third party for any direct, indirect, special, incidental, reliance, consequential, exemplary or punitive damages, including, but not limited to, loss of revenue or profits, for any reason whatsoever, including, but not limited to, any act or omission, failure to perform, delay, interruption, failure to provide any service or any failure in or breakdown of facilities associated with the service.
- C. The liability of the Company for errors in billing that results in overpayment by the Customer shall be limited to a credit equal to the dollar amount erroneously billed or, in the event that payment has been made and service has been discontinued, to a refund of the amount erroneously billed.
- D. The Company shall be indemnified and saved harmless by the Customer from and against all loss, liability, damage and expense, including reasonable counsel fees, due to:
  - 1. Any act or omission of: (a) the Customer; (b) any other entity furnishing service, equipment or facilities for use in conjunction with services or facilities provided by the Company; or (c) common carriers or warehousemen, except as contracted by the Company;
  - 2. Any delay or failure of performance or equipment due to causes beyond the Company's control, including but not limited to, acts of God, fires, floods, earthquakes, hurricanes, or other catastrophes; national emergencies, insurrections, riots, wars or other civil commotions; strikes, lockouts, work stoppages or other labor difficulties; criminal actions taken against the Company; unavailability, failure or malfunction of equipment or facilities provided by the Customer or third parties; and any law, order, regulation or other action of any governing authority or agency thereof;
  - 3. Any unlawful or unauthorized use of the Company's facilities and services;
  - 4. Libel, slander, invasion of privacy or infringement of patents, trade secrets, or copyrights arising from or in connection with the material transmitted by means of Company-provided facilities or services; or by means of the combination of Company-provided facilities or services;
  - 5. Breach in the privacy or security of communications transmitted over the Company's facilities;

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.1 Undertaking of the Company (Cont'd)****2.1.4 Limitations on Liability (Cont'd)****D. (Cont'd)**

6. Changes in any of the facilities, operations or procedures of the Company that render any equipment, facilities or services provided by the Customer obsolete, or require modification or alteration of such equipment, facilities or services, or otherwise affect their use or performance, except where reasonable notice is required by the Company and is not provided to the Customer, in which event the Company's liability is limited as set forth in paragraph A. of this Subsection 2.1.4;
7. Defacement of or damage to Customer premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof which is not the result of negligence;
8. Injury to property or injury or death to persons, including claims for payments made under Workers' Compensation law or under any plan for employee disability or death benefits, arising out of, or caused by, any acts or omission of the Customer, or the construction, installation, maintenance, presence, use or removal of the Customer's facilities or equipment connected, or to be connected to the Company's facilities;
9. Any noncompletion of calls due to network busy conditions;
10. Any calls not actually attempted to be completed during any period that service is unavailable;
11. And any other claim resulting from any act or omission of the Customer or patron(s) of the Customer relating to the use of the Company's services or facilities.

E. The Company does not guarantee nor make any warranty with respect to installations provided by it for use in an explosive atmosphere.

F. The Company makes no warranties or representations, EXPRESS OR IMPLIED, either in fact or by operation of law, statutory or otherwise, including warranties of merchantability or fitness for a particular use, except those expressly set forth herein.

G. Failure by the Company to assert its rights pursuant to one provision of this rate sheet does not preclude the Company from asserting its rights under other provisions.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.1 Undertaking of the Company (Cont'd)****2.1.4 Limitations on Liability (Cont'd)**

- H. Directory Errors – In the absence of gross negligence or willful misconduct, no liability for damages arising from errors or mistakes in or omissions of directory listings, or errors or mistakes in or omissions of listing obtainable from the directory assistance operator, including errors in the reporting thereof, shall attach to the Company. An allowance for errors or mistakes in or omissions of published directory listings or for errors or mistakes in or omissions of listing obtainable from the directory assistance operator shall be at the monthly Tariff rate for each listing, or in the case of a free or no-charge directory listing, credit shall equal two times the monthly Tariff rate for an additional listing, for the life of the directory or the charge period during which the error, mistake or omission occurs.
- I. With respect to Emergency 911 Service:
1. This service is offered solely as an aid in handling assistance calls in connection with fire, police and other emergencies. The Company is not responsible for any losses, claims, demands, suits or any liability whatsoever, whether suffered, made, instituted or asserted by the Customer or by any other party or person for any personal injury or death of any person or person, and for any loss, damage or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused by: (1) mistakes, omissions, interruptions, delays, errors or other defects in the provision of service; or (2) installation, operation, failure to operate, maintenance, removal, presence, condition, local or use of any equipment and facilities furnishing this service.
  2. Neither is the Company responsible for any infringement, nor invasion of the right of privacy of any person or persons, caused or claimed to have been caused directly or indirectly, by the installation, operation, failure to operate, maintenance, removal, presence, condition, occasion or use of emergency 911 service features and the equipment associated therewith, or by any services furnished by the Company, including, but not limited to the identification of the telephone number, address or name associated with the telephone used by the party or parties accessing emergency 911 service, and which arise out of the negligence or other wrongful act of the Company, its users, agencies or municipalities, or the employees or agents of any one of them.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.1 Undertaking of the Company (Cont'd)****2.1.4 Limitations on Liability (Cont'd)****I. With respect to Emergency 911 Service (Cont'd)**

3. When a Customer with a nonpublished telephone number, as defined herein, places a call to the emergency 911 service, the Company will release the name and address of the calling party, where such information can be determined, to the appropriate local government authority responsible for emergency 911 service upon request of such governmental authority. By subscribing to service under this rate sheet, the Customer acknowledges and agrees with the release of information as described above.

**2.1.5 Notification of Service-Affecting Activities**

The Company will provide the Customer reasonable notification of service-affecting activities that may occur in normal operation of its business. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements and routine preventative maintenance. Generally, such activities are not specific to an individual Customer but affect many Customers' services. No specific advance notification period is applicable to all service activities. The Company will work cooperatively with the Customer to determine the reasonable notification requirements. With some emergency or unplanned service-affecting conditions, such as an outage resulting from cable damage, notification to the Customer may not be possible.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.1 Undertaking of the Company (Cont'd)****2.1.6 Provision of Equipment and Facilities**

- A. The Company shall use reasonable efforts to make available services to a Customer on or before a particular date, subject to the provisions of and compliance by the Customer with, the regulations contained in this Tariff. The Company does not guarantee availability by any such date and shall not be liable for any delays in commencing service to any customer.
- B. The Company shall use reasonable efforts to maintain only the facilities and equipment that it furnishes to the Customer. The Customer may not, nor may the Customer permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise interfere with any of the facilities or equipment installed by the Company, except upon the written consent of the Company.
- C. The Company may substitute, change or rearrange any equipment or facility at any time and from time to time, but shall not thereby alter the technical parameters of the service provided by the Customer.
- D. Equipment the Company provides or installs at the Customer Premises for use in connection with the services the Company offers shall not be used for any purpose other than that for which it was provided.
- E. The Customer shall be responsible for the payment of service charges as set forth herein for visits by the Company's agents or employees to the Premises of the Customer when the service difficulty or trouble report results from the use of equipment or facilities provided by any other party other than the Company, including, but not limited to, the Customer.
- F. The Company shall not be responsible for the installation, operation, or maintenance of any Customer-provided communications equipment. Where such equipment is connected to the facilities furnished pursuant to this Tariff, the responsibility of the Company shall be limited to the furnishing of facilities offered under this Tariff and to the maintenance and operation of such facilities. Subject to this responsibility, the Company shall not be responsible for:
  - (1) the transmission of signals by Customer-provided equipment or for the quality of, or defects in, such transmission; or
  - (2) the reception of signals by Customer-provided equipment.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.1 Undertaking of the Company (Cont'd)****2.1.7 Non-routine Installation**

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours or in hazardous locations. In such cases, charges based on cost of the actual labor, material, or other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, holidays and/or night hours, additional hours may apply.

**2.1.8 Special Construction**

Subject to the agreement of the Company and to all of the regulations contained in this Tariff, special construction of facilities may be undertaken on a reasonable efforts basis at the request of the Customer. Special construction is that construction undertaken:

- A. where facilities are not presently available, and there is no other requirement for the facilities so constructed;
- B. of a type other than that which the Company would normally utilize in the furnishing of its services;
- C. over a route other than that which the Company would normally utilize in the furnishing of its services;
- D. in a quantity greater than that which the Company would normally construct;
- E. on an expedited basis;
- F. on a temporary basis until permanent facilities are available;
- G. involving abnormal costs; or
- H. in advance of its normal construction.

**2.1.9 Ownership of Facilities**

Title to all facilities provided in accordance with this Tariff remains in the Company, its partners, agents, contractors or suppliers.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.2 Prohibited Uses**

- 2.2.1 The services the Company offers shall not be used for any unlawful purpose or for any use as to which the Customer has not obtained all required governmental approvals, authorizations, licenses, consents and permits.
- 2.2.2 The Company may require applicants for service who intend to use the Company's offerings for resale and/or for shared use to file a letter with the Company confirming that their use of the Company's offerings complies with relevant laws and PUC regulations, policies, orders, and decisions.
- 2.2.3 The Company may block any signals being transmitted over its Network by Customers which cause interference to the Company or other users. Customer shall be relieved of all obligations to make payments for charges relating to any blocked Service and shall indemnify the Company for any claim, judgment or liability resulting from such blockage.
- 2.2.4 A customer, joint user, or authorized user may not assign, or transfer in any manner, the service or any rights associated with the service without the written consent of the Company. The Company will permit a Customer to transfer its existing service to another entity if the existing Customer has paid all charges owed to the Company for regulated communications services. Such a transfer will be treated as a disconnection of existing service and installation of new service, and non-recurring installation charges as stated in this Tariff will apply.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.3 Obligations of the Customer****2.3.1 General**

The Customer is responsible for making proper application for service; placing any necessary order, complying with Tariff regulations; payment of charges for services provided. Specific Customer responsibilities include, but are not limited to the following:

- A. the payment of all applicable charges pursuant to this Tariff;
- B. damage to or loss of the Company's facilities or equipment caused by the acts of omissions of the Customer; or the noncompliance by the Customer, with these regulations; or by fire or theft or other casualty on the Customer Premises, unless caused by the negligence or willful misconduct of the employees or agents of the Company;
- C. providing at no charge, as specified from time to time by the Company, any needed personnel, equipment space and power to operate Company facilities and equipment installed on the premises of the Customer, and the level of heating and air conditioning necessary to maintain the proper operating environment on such premises;
- D. obtaining, maintaining, and otherwise having full responsibility for all rights-of-way and conduits necessary for installation of fiber optic cable and associated equipment used to provide Communication Services to the Customer from the cable building entrance or property line to the location of the equipment space described in 2.3.1(C.). Any and all costs associated with obtaining and maintaining the rights-of-way described herein, including the costs of altering the structure to permit installation of the Company-provided facilities, shall be borne entirely by, or may be charged by the Company to, the Customer. The Company may require the Customer to demonstrate its compliance with this section prior to accepting an order for service;

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.3 Obligations of the Customer (Cont'd)****2.3.1 General (Cont'd)**

- E. providing a safe place to work and complying with all laws and regulations regarding the working conditions on the premises at which Company employees and agents shall be installing or maintaining the Company's facilities and equipment. The Customer may be required to install and maintain Company facilities and equipment within a hazardous area if, in the Company's opinion, injury or damage to the Company's employees or property might result from installation or maintenance by the Company. The Customer shall be responsible for identifying, monitoring, removing and disposing of any hazardous material (e.g., asbestos) prior to any construction or installation work;
- F. complying with all laws and regulations applicable to, and obtaining all consents, approvals, licenses and permits as may be required with respect to, the location of Company facilities and equipment in any Customer premises or the rights-of-way for which Customer is responsible under Section 2.3.1(D); and granting or obtaining permission for Company agents or employees to enter the premises of the Customer at any time for the purpose of installing, inspecting, maintaining, repairing, or upon termination of service as stated herein removing the facilities or equipment of the Company;
- G. not creating, or allowing to be placed, any liens or other encumbrances on the Company's equipment or facilities; and
- H. making Company facilities and equipment available periodically for maintenance purposes at a time agreeable to both the Company and the Customer. No allowance will be made for the period during which service is interrupted for such purposes.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.3 Obligations of the Customer (Cont'd)****2.3.2 Liability of the Customer**

- A. The Customer will be liable for damages to the facilities of the Company and for all incidental and consequential damages caused by the negligent or intentional acts or omissions of the Customer, its officers, employees, agents, invites, or contractors where such acts or omissions are not the direct result of the Company's negligence or intentional misconduct.
- B. To the extent caused by any negligent or intentional act of the Customer as described in A., preceding, the Customer shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees, for (1) any loss, destruction or damage to property of any third party, and (2) any liability incurred by the Company to any third party pursuant to this or any other rate sheet of the Company, or otherwise, for any interruption of, interference to, or other defect in any service provided by the Company to such third party.
- C. The Customer shall not assert any claim against any other Customer or user of the Company's services for damages resulting in whole or in part from or arising in connection with the furnishing of service under this rate sheet including, but not limited to, mistakes, omissions, interruptions, delays, errors or other defects or misrepresentations, whether or not such other Customer or user contributed in any way to the occurrence of the damages, unless such damages were caused solely by the negligent or intentional act or omission of the other Customer or user and not by any act or omission of the Company. Nothing in this tariff is intended either to limit or to expand Customer's right to assert any claims against third parties for damages of any nature other than those described in the preceding sentence.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.4 Customer Equipment and Channels****2.4.1 General**

A User may transmit or receive information or signals via the facilities of the Company. The Company's services are designed primarily for the transmission of voice-grade telephonic signals, except as otherwise stated in this Tariff. A User may transmit any form of signal that is compatible with the Company's equipment, but the Company does not guarantee that its services will be suitable for purposes other than voice-grade telephonic communication except as specifically stated in this Tariff.

**2.4.2 Station Equipment**

- A. Terminal equipment on the User's Premises and the electric power consumed by such equipment shall be provided by and maintained at the expense of the User. The User is responsible for the provision of wiring or cable to connect its terminal equipment to the Company Point of Connection.
- B. The Customer is responsible for ensuring that Customer-provided equipment connected to Company equipment and facilities is compatible with such equipment and facilities. The magnitude and character of the voltages and currents impressed on Company-provided equipment and wiring by the connection, operation, or maintenance of such equipment and wiring shall be such as not to cause damage to the Company-provided equipment and wiring or injury to the Company's employees or to other persons. Any additional protective equipment required to prevent such damage or injury shall be provided by the Company at the Customer's expense, subject to prior Customer approval of the equipment expense.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.4 Customer Equipment and Channels (Cont'd)****2.4.3 Interconnection of Facilities**

- A. Any special interface equipment necessary to achieve compatibility between the facilities and equipment of the Company used for furnishing Communication Services and the channels, facilities, or equipment of others shall be provided at the Customer's expense.
- B. Communications Services may be connected to the services or facilities of other communications carriers only when authorized by, and in accordance with, the terms and conditions of the Tariffs of the other communications carriers that are applicable to such connections.
- C. Facilities furnished under this Tariff may be connected to Customer-provided terminal equipment in accordance with the provisions of this Tariff. All such terminal equipment shall be registered by the Federal Communications Commission pursuant to Part 68 of Title 47, Code of Federal Regulations; and all User-provided wiring shall be installed and maintained in compliance with those regulations.
- D. Users may interconnect communications facilities that are used in whole or in part for interstate communications to services provided under this Tariff only to the extent that the user is an "End User" as defined in Section 69.2(m), Title 47, Code of Federal Regulations (1992 edition).

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.4 Customer Equipment and Channels (Cont'd)****2.4.4 Inspections**

- A. Upon suitable notification to the Customer, and at a reasonable time, the Company may make such tests and inspections as may be necessary to determine that the Customer is complying with the requirements set forth in Section 2.4.2A. for the installation, operation, and maintenance of Customer-provided facilities, equipment, and wiring in the connection of Customer-provided facilities and equipment to Company-owned facilities and equipment.
- B. If the protective requirements for Customer-provided equipment are not being complied with, the Company may take such action as it deems necessary to protect its facilities, equipment, and personnel. The Company will notify the Customer promptly if there is any need for further corrective action. Within ten days of receiving this notice, the Customer must take this corrective action and notify the Company of the action taken. If the Customer fails to do this, the Company may take whatever additional action is deemed necessary, including the suspension of service, to protect its facilities, equipment and personnel from harm.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.5 Payment Arrangements****2.5.1. Payment for Service**

The Customer is responsible for the payment of all charges for facilities and services furnished by the Company to the Customer and to all Authorized Users by the Customer, regardless of whether those services are used by the Customer itself or are resold to or shared with other persons.

The Customer is responsible for payment of any sales, use, gross receipts, excise, access or other local, state, federal and 911 taxes, charges or surcharges (however designated) (excluding taxes on Company's net income) imposed on or based upon the provision, sale or use of Network Services. The Company will not separately charge for the South Carolina gross receipts tax on the Company's invoice for local services. Any taxes imposed by a local jurisdiction (e.g., county and municipal) will only be recovered from those Customers residing in the affected jurisdictions.

Certain telecommunications services, as defined in the South Carolina Revised Code, are subject to state sales tax at the prevailing tax rates, if the services originate, or terminate in South Carolina, or both, and are charged to a subscriber's telephone number or account in South Carolina.

The security of the Customer's PIN is the responsibility of the Customer. All calls placed using a PIN shall be billed to and shall be the obligation of the Customer. The Customer shall not be responsible for charges in connection with the unauthorized use of PINs arising after the Customer notifies the Company of the loss, theft, or other breach of security of such PINs.

Customers will only be charged once, on either an interstate or intrastate basis, for any nonrecurring charges.

**2.5.2 Billing and Collection of Charges**

The Customer is responsible for payment of all charges incurred by the Customer or other Authorized Users for services and facilities furnished to the Customer by the Company.

- A. Nonrecurring charges are due and payable within thirty (30) days of receipt of bill, unless otherwise agreed to in advance.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.5 Payment Arrangements (Cont'd)****2.5.2 Billing and Collection of Charges (Cont'd)**

- B. The Company shall present invoices for recurring charges monthly to the Customer, in advance of the month in which service is provided, and Recurring Charges shall be due and payable within thirty (30) days after the invoice date. When billing is based on customer usage, charges will be billed monthly for the preceding billing periods.
- C. When service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have thirty (30) days.
- D. Billing of the Customer by the Company will begin on the Service Commencement Date, which is the first day following the date on which the Company notifies the Customer that the service or facility is available for use, except that the Service Commencement Date may be postponed by mutual agreement of the parties, or if the service or facility is available for use, except that the Service Commencement Date may be postponed by mutual agreement of the parties, or if the service or facility does not conform to standards set forth in this Tariff or the Service Order. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.
- E. If any portion of the payment is not received by the Company, or if any portion of the payment is not received by the Company in funds that are not immediately available, within thirty (30) days of the mail date on the bill, then a late payment penalty shall be due the Company. The late payment penalty shall be that portion of the payment not received by the date due minus any charges billed as local taxes, multiplied by 1.5%.
- F. The Customer will be assessed a charge for each check or other payment type submitted by the Customer to the Company that a bank or other financial institution refuses to honor. The charge may be equal but not exceed the rate allowed by the S.C. Code Annotated, Section 34-11-70.
- G. If service is disconnected by the Company in accordance with Section 2.5.6 following and later restored, restoration of service will be subject to all applicable installation charges.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.5 Payment Arrangements (Cont'd)****2.5.3 Disputed Bills**

- A. In the event that a billing dispute occurs concerning any charges billed to the Customer by the Company, the Company may require the Customer to pay the undisputed portion of the bill to avoid discontinuance of service for non-payment. The Customer must submit a documented claim for the disputed amount. The Customer will submit all documentation as may reasonably be required to support the claim. All claims must be submitted to the Company within 90 days of receipt of billing for those services. If the Customer does not submit a claim as stated above, the Customer waives all rights to filing a claim thereafter.
- B. The Customer should notify the Company of any disputed items on an invoice within an interval from receipt of the invoice that is within the State's statute of limitations. If the Customer and the Company are unable to resolve the dispute to their mutual satisfaction, the Customer may file a complaint with the South Carolina Public Service Commission in accordance with the Commission's rules of procedure. The address of the Commission is as follows:

South Carolina Public Service Commission  
Koger Executive Center  
101 Executive Center Drive  
Columbia, South Carolina 29210

- C. If the dispute is resolved in favor of the Customer and the Customer has withheld the disputed amount, no interest credits or penalties will apply.

**2.5.4 Advance Payments**

To safeguard its interests, the Company may require a Customer to make an advance payment before services and facilities are furnished. The advance payment will not exceed an amount equal to the non-recurring charge(s) and one month's charges for the service or facility. In addition, where special construction is involved, the advance payment may also include an amount equal to the estimated non-recurring charges for the special construction and recurring charges (if any) for a period to be set between the Company and the Customer. The advance payment will be credited to the Customer's initial bill. An advance payment may be required in addition to a deposit.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)**

**2.5 Payment Arrangements (Cont'd)**

**2.5.5 Deposits**

The Company does not collect Customer Deposits.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.5 Payment Arrangements (Cont'd)****2.5.6 Discontinuance of Service**

- A. Upon nonpayment of any amounts owing to the Company, the Company may, by giving five (5) days' written notice to the Customer, discontinue or suspend service without incurring any liability. No basic residential service shall be disconnected for nonpayment until at least 20 days from the date of the bill and only following proper written notification.
- B. Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving five (5) days' written notice to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.
- C. Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.5 Payment Arrangements (Cont'd)****2.5.6 Discontinuance of Service (Cont'd)**

- D. Upon the Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, or failing to discharge an involuntary petition within the time permitted by law, the Company may immediately discontinue or suspend service without incurring any liability.
- E. Upon any governmental prohibition or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.
- F. In the event of fraudulent use of the Company's network, the Company will discontinue service without notice and/or seek legal recourse to recover all costs involved in enforcement of this provision.
- G. Upon the Company's discontinuance of service to the Customer under Section 2.5.6 A. or 2.5.6 B., the Company, in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this tariff, may declare all future monthly and other charges that would have been payable by the Customer during the remainder of the term for which such services would have otherwise been provided to the Customer to be immediately due and payable (discounted to present value at six percent).
- H. Without notice in the event of Customer use of equipment or services in such a manner as to adversely affect the Company's service to others.
- I. Without notice in the event of tampering with the equipment or services furnished by the Company.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.5 Payment Arrangements (Cont'd)****2.5.7 Cancellation of Application for Service**

- A. Applications for service cannot be canceled without the Company's agreement. Where the Company permits a Customer to cancel an application for service prior to the start of service or prior to any special construction, no charges will be imposed except for those specified below.
- B. Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the service or in preparing to install the service that it otherwise would not have incurred, a charge equal to the costs incurred by the Company, less net salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of services ordered, including installation charges, and all charges others levy against the Company that would have been chargeable to the Customer had service commenced (all discounted to present value at six percent).
- C. Where the Company incurs any expense in connection with special construction, or where special arrangements of facilities or equipment have begun, before the Company receives a cancellation notice, a charge equal to the costs incurred by the Company, less net salvage, applies. In such cases, the charge will be based on such elements as the cost of the equipment, facilities, and material, the cost of installation, engineering, labor, and supervision, general and administrative expense, other disbursements, depreciation, maintenance, taxes, provision for return on investment, and any other costs associated with the special construction or arrangements.
- D. The special charges described in 2.5.7.A. through 2.5.7.C. will be calculated and applied on a case-by-case basis.

**2.5.8 Changes in Service Requested**

If the Customer makes or request material changes in circuit engineering, equipment specifications, service parameters, premises locations, or otherwise materially modifies any provision of the application for service, the Customer's installation fee shall be adjusted accordingly.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.6 Allowances for Interruptions in Service**

Interruptions in service that are not due to the negligence of, or noncompliance with the provisions of this Tariff by, the Customer or the operation or malfunction of the facilities, power or equipment provided by the Customer, will be credited to the Customer as set forth in 2.6.1 for the part of the service that the interruption affects.

**2.6.1 General**

- A. A credit allowance will be given when service is interrupted, except as specified below. A service is interrupted when it becomes inoperative to the Customer, e.g., the Customer is unable to transmit or receive, because of a failure of a component furnished by the Company under this Tariff.
- B. An interruption period begins when the Customer reports a service, facility or circuit to be inoperative and, if necessary, releases it for testing and repair. An interruption period ends when the service, facility or circuit is operative.
- C. If the Customer reports a service, facility or circuit to be interrupted but declines to release it for testing and repair, or refuses access to its premises for test and repair by the Company, the service, facility or circuit is considered to be impaired but not interrupted. No credit allowances will be made for a service, facility or circuit considered by the Company to be impaired.
- D. The Customer shall be responsible for the payment of service charges as set forth herein for visits by the Company's agents or employees to the premises of the Customer when the service difficulty or trouble report results from the use of equipment or facilities provided by any party other than the Company, including, but not limited to, the Customer.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.6. Allowances for Interruptions in Service (Cont'd)****2.6.2 Limitations of Allowances**

No credit allowance will be made for any interruption in service:

- A. Due to the negligence of or noncompliance with the provisions of this rate sheet by any person or entity other than the Company, including, but not limited to, the Customer;
- B. Due to the failure of power, equipment, systems, connections or services not provided by the Company;
- C. Due to circumstances or causes beyond the reasonable control of the Company;
- D. During any period in which the Company is not given full and free access to its facilities and equipment for the purposes of investigating and correcting interruptions;
- E. A service will not be deemed to be interrupted if a Customer continues to voluntarily make use of such service. If the service is interrupted, the Customer can get a service credit, use another means of communications provided by the Company (pursuant to Section 2.6.3), or utilize another service provider;
- F. During any period when the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
- G. That occurs or continues due to the Customer's failure to authorize replacement of any element of special construction; and
- H. That was not reported to the Company within thirty (30) days of the date that service was affected.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.6 Allowances for Interruptions in Service (Cont'd)****2.6.3 Use of Another Means of Communication**

If the Customer elects to use another means of communications during the period of interruption, the Customer must pay the charges for the alternative service used.

**2.6.4 Application for Credits for Interruptions in Service**

A. Credits for interruptions in service that is provided and billed on a flat rate basis for a minimum period of at least one month, beginning on the date that billing becomes effective, shall in no event exceed an amount equivalent to the proportionate charge to the Customer for the period of service during which the event that gave rise to the claim for a credit occurred. A credit allowance is applied on a pro rata basis against the rates specified hereunder and is dependent upon the length of the interruption. Only those facilities on the interrupted portion of the circuit will receive a credit.

B. For calculating credit allowances, every month is considered to have thirty (30) days.

C. A credit allowance will be given for interruptions of thirty (30) minutes or more. Two or more interruptions of fifteen (15) minutes or more during any one 24-hour period shall be combined into one cumulative interruption.

D. Interruptions of 24 Hours or Less

<b>Length of Interruption</b>	<b>Amount of Service to be Credited</b>
Less than 30 minutes	None
30 minutes up to but not including 3 hours	1/10 Day
3 hours up to but not including 6 hours	1/5 Day
6 hours up to but not including 9 hours	2/5 Day
9 hours up to but not including 12 hours	3/5 Day
12 hours up to but not including 15 hours	4/5 Day
15 hours up to but not including 24 hours	One Day

E. Interruptions Over 24 Hours and Less Than 72 Hours

Interruptions over 24 hours and less than 72 hours will be credited 1/5 day for each 3-hour period or fraction thereof. No more than one full day's credit will be allowed for any period of 24 hours.

F. Interruptions Over 72 Hours

Interruptions Over 72 hours will be credit 2 days for each full 24-hour period. No more than thirty (30) days credit will be allowed for any one-month period.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.6 Allowances for Interruptions in Service (Cont'd)****2.6.5 Cancellation for Service Interruption**

Cancellation or termination for service interruption is permitted only if any circuit experiences a single continuous outage of 8 hours or more or cumulative service credits equaling 16 hours in a continuous 12-month period. The right to cancel service under this provision applies only to the single circuit that has been subject to the outage or cumulative service credits.

**2.7 Use of Customer's Service by Others****2.7.1 Joint Use Arrangements**

Joint use arrangements will be permitted for all services provided under this Tariff. From each joint use arrangement, one member will be designated as the Customer responsible for the manner in which the joint use of the service will be allocated. The Company will accept orders to start, rearrange, relocate or discontinue service only from the designated Customer. Without affecting the Customer's ultimate responsibility for payment of all charges for the service, each joint user shall be responsible for the payment of the charges billed to it.

**2.7.2 Resale and Sharing**

SECTION 2.7.2 IS AVAILABLE ONLY TO CARRIERS WHICH ARE CERTIFIED BY THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION TO PROVIDE INTRASTATE LOCAL EXCHANGE SERVICES

There are no prohibitions or limitations on the resale of services. Prices for services appear in the price sheet attached to this tariff. Any service provided under this tariff may be resold to or shared with other persons at the option of Customer, subject to compliance with any applicable laws of the South Carolina Public Service Commission regulations governing such resale or sharing. The Customer remains solely responsible for all use of services ordered by it or billed to its telephone number(s) pursuant to this tariff, for determining who is authorized to use its services and for notifying the Company of any unauthorized use.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.8 Cancellation of Service/Termination Liability**

If a Customer cancels a Service Order or terminates services before the completion of the term for any reason whatsoever other than a service interruption (as defined in Section 2.6.1 above), the Customer agrees to pay to the Company termination liability charges, as defined below. These charges shall become due as of the effective date of the cancellation or termination and be payable within the period, set forth in Section 2.5.2.

**2.8.1 Termination Liability**

The Customer's termination liability for cancellation of service shall be equal to:

- A. all unpaid Non-Recurring charges reasonably expended by the Company to establish service to the Customer; plus
- B. any disconnection, early cancellation or termination charges reasonable incurred and paid to third parties by the Company on behalf of the Customer; plus
- C. all Recurring Charges specified in the applicable Service Order Tariff for the balance of the then current term discounted at the prime rate announced in the Wall Street Journal on the third business day following the date of cancellation;
- D. minus a reasonable allowance for costs avoided by the Company as a direct result of the Customer's cancellation.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)**

**2.9 Transfers and Assignments**

Neither the Company nor the Customer may assign or transfer its rights or duties in connection with the services and facilities provided by the Company without the written consent of the other party, except that the Company may assign its rights and duties:

- 2.9.1 to any subsidiary, parent company or affiliate of the Company; or
- 2.9.2 pursuant to any sale or transfer of substantially all the assets of the Company; or
- 2.9.3 pursuant to any financing, merger or reorganization of the Company.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.10 Customer Liability for Unauthorized Use of the Network**

Unauthorized use of the network occurs when a person or entity that does not have actual, apparent or implied authority to use the network, obtains the Company's services provided under this Tariff.

**2.10.1 Customer Liability for Fraud and Unauthorized Use of the Network**

- A. The Customer is liable for the unauthorized use of the network obtained through the fraudulent use of a Company calling card, if such a card is offered by the Company, or an accepted credit card, provided that the unauthorized use occurs before the Company has been notified.
- B. A Company calling card is a telephone calling card issued by the Company at the Customer's request, which enables the Customer or user(s) authorized by the Customer to place calls over the Network and to have the charges for such calls billed to the Customer's account.

An accepted credit card is any credit card that a cardholder has requested or applied to and received, or has signed, used, or authorized another person to use to obtain credit. Any credit card issued as a renewal or substitute in accordance with this paragraph is an accepted credit card when received by the cardholder.

- C. The Customer must give the Company written or oral notice that an unauthorized use of a Company calling card or an accepted credit card has occurred or may occur as a result of loss and/or theft.
- D. The Customer is responsible for payment of all charges for calling card services furnished to the Customer or to users authorized by the Customer to use service provided under this rate sheet, unless due to the negligence of the Company. This responsibility is not changed due to any use, misuse or abuse of the Customer's service or Customer-provided equipment by third parties, the Customer's employees, or the public.

The liability of the Customer for unauthorized use of the Network by credit card fraud will not exceed the lesser of fifty dollars (\$50.00) or the amount of money, property, labor, or services obtained by the unauthorized user before notification to the Company.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.11 Notices and Communications**

- 2.11.1 The Customer shall designate on the Service Order an address to which the Company shall mail or deliver all notices and other communications, except that the Customer may also designate a separate address to which the Company's bills for service shall be mailed.
- 2.11.2 The Company shall designate on the Service Order an address to which the Customer shall mail or deliver all notices and other communications, except that Company may designate a separate address on each bill for service to which the Customer shall mail payment on that bill.
- 2.11.3 Except as otherwise stated in this Tariff, all notices or other communications required to be given pursuant to this Tariff will be in writing. Notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third business day following placement of the notice, communication or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.
- 2.11.4 The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by following the procedures for giving notice set forth herein.

**2.12 Taxes, Fees and Surcharges**

The Company reserves the right to bill any and all applicable taxes, fees and surcharges in addition to the normal rates and charges for services provided to the Customer. Taxes and fees include, but are not limited to, Federal Excise Tax, State Sales Tax, Municipal tax, and Gross Receipts Tax. Unless otherwise specified in this tariff, such taxes, fees and surcharges are in addition to rates as quoted in this tariff and will be itemized separately on Customer invoices.

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**SECTION 2 – RULES AND REGULATIONS (CONT'D)****2.13 Miscellaneous Provisions****2.13.1 Telephone Number Changes**

Whenever any Customer's telephone number is changed after a directory is published, the Company shall intercept all calls to the former number for at least one hundred and twenty (120) days and give the calling party the new number provided existing central office equipment will permit, and the Customer so desires.

When service in an existing location is continued for a new Customer, the existing telephone number may be retained by the new Customer only if the former Customer consents in writing, and if all charges against the account are paid or assumed by the new Customer.

**2.13.2 Maintenance and Operations Records**

Records of various tests and inspections, to include non-routine corrective maintenance actions or monthly traffic analysis summaries for network administration, necessary for the purposes of the Company or to fulfill the requirements of Commission rules shall be kept on file in the office of the Company as required under Commission rules.

**2.13.3 Marketing**

As a telephone utility under the regulation of the South Carolina Public Service Commission, the Company hereby asserts and affirms that as a reseller of intrastate service, the Company will not indulge or participate in deceptive or misleading telecommunications marketing practices to the detriment of consumers in South Carolina, and the Company will comply with those marketing practices, if any, set forth by the Commission. Additionally, the Company will be responsible for the marketing practices of its contracted telemarketers for compliance with the provision. The Company understands that violation of this provision could result in a rule to Show Cause as to the withdrawal of its certification to complete intrastate telecommunications traffic within the State of South Carolina.

**2.14 Customer Responsibility****A. Cancellation by Customer**

Customers may cancel service verbally or in writing. The Company shall hold the Customer responsible for payment of all charges, including fixed fees, surcharges, etc., which accrue up to the cancellation date. Customers that cancel the primary local exchange line will have the entire Account disconnected, including any secondary line and all associated features. In the event the Customer executes a term commitment agreement with the Company, the Customer must cancel service and terminate the agreement in accordance with the agreement terms.

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**SECTION 3 – SERVICE AREAS****3.1 Exchange Service Areas**

Local exchange services are provided, subject to availability of facilities and equipment, in areas currently served by the following Incumbent LECs: 1) BellSouth Telecommunications.

**3.2 Rate Groups**

Charges for local services provided by the Company in certain areas may be based, in part, on the Rate Group associated with the Customer's End Office. The Rate Group is determined by the total access lines and PBX trunks in the local calling area which can be reached from each End Office.

In the event that an Incumbent LEC or the South Carolina Public Service Commission reclassifies an exchange or End Office from one Rate Group to another, the reclassification will also apply to UCN, Inc. customers who purchase services under this tariff. Local calling areas and Rate Group assignments are equivalent to those areas and groups specified in BellSouth Telecommunications, Inc. South Carolina General Subscriber Service Tariff ("GSST").

<b>Rate Group</b>	<b>Exchange Access Lines and PBX Trunks in Local Calling Area – Upper Limit</b>
1	0 to 7,000
2	7,001 to 15,000
3	15,001 to 28,500
4	28,501 to 50,000
5	50,001 to 78,000
6	78,001 to 125,000
7	125,000 up

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**SECTION 3 – SERVICE AREAS (Cont'd)**
**3.3 Exchange and UNE Zone Listings**

<b>Exchange</b>	<b>UNE Zone</b>	<b>Additional Exchanges</b>
Aiken	2	Bath, Beech Island, Graniteville, Jackson, New Ellenton, North Augusta
Allendale	3	Barnwell, Fairfax
Anderson	1	Belton, Honea Path, Pelzer, Pendleton, Starr-Iva, Williamston
Antioch	N/A	Blacksburg, Grover, NC, Kings Mountain, NC, Shelby, NC
Bamberg	2	Denmark, Ehrhardt, Orangeburg
Barnwell	3	Allendale, Blackville, Denmark, Williston
Batesburg	3	Pond Branch, Ridge Spring
Bath	1	Aiken, Augusta, GA, Beech Island, Graniteville, Jackson, North Augusta
Beech Island	1	Aiken, Appling, GA, Augusta, GA, Bath, Harlem, GA, Hephzibah, GA, Jackson, North Augusta
Belton	2	Anderson, Honea Path, Pelzer, Williamston
Bennettsville	3	Blenheim, Clio, McColl
Blacksburg	3	Gaffney, Grover, NC (includes those exchange access lines in Antioch, SC which are part of the Grover, NC exchange), Hickory Grove
Blackville	3	Barnwell, Denmark, Williston
Blenheim	3	Bennettsville, Clio, McColl
Blue Ridge	1	Greenville, Greer, Lyman, Travelers Rest
Camden	3	Bethune
Central	2	Clemson, Easley, Liberty, Pickens, Six Mile
Chapin-Little Mountain	1	Newberry, Prosperity, Chapin-Little Mountain South
Chapin-Little Mountain South	1	Columbia, Chapin-Little Mountain North
Charleston	1	Folly Beach, Hollywood, Isle of Palms, Mt. Pleasant, Sullivan's Island, Summerville
Cheraw	3	Chesterfield, Patrick
Clemson	2	Central, Pendleton, Seneca, Six Mile
Clinton	3	Joanna, Laurens, Laurens Rural
Clio	3	Bennettsville, Blenheim, McColl
Clover	2	Gastonia, NC (includes those exchange access lines located in Mill Creek, SC and vicinity which are a part of the Gastonia, NC exchange), Lake Wylie, Lake Wylie West, South Crowders Creek, NC, York
Columbia	1	Chapin-Little Mountain South, Eastover, Lexington
Cowpens	1	Spartanburg

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**SECTION 3 – SERVICE AREAS (Cont'd)**
**3.3 Exchange and UNE Zone Listings**

Darlington	1	Florence, Hartsville, Lamar, Society Hill, Timmons ville
Denmark	3	Bamberg, Barnwell, Blackville, Olar
Dillon	3	Dillon, NC, Florence, Lake View, Latta
Easley	1	Central, Greenville, Liberty, Pickens, Six Mile
Eastover	1	Columbia
Edgefield	3	Johnston
Edisto Island	3	None
Florence	1	Darlington, Hartsville, Lamar, Marion, Mullins, Nichols, Pamplico, Society Hill, Timmons ville
Folly Beach	1	Charleston, Isle of Palms, Mt. Pleasant, Sullivans Island
Fountain Inn	1	Greenville, Simpsonville
Gaffney	3	Blacksburg
Graniteville	2	Aiken, Bath, North Augusta, portion of Beech Isalnd located within the property boundaries of the Savannah River Site
Greenville	1	Blue Ridge, Easley, Fountain Inn, Greer, Liberty, Pickens, Piedmont, Simpsonville, Travelers Rest
Greer	1	Blue Ridge, Greenville, Lyman
Hartsville	1	Darlington, Flrence, Lamar, McBee, Patrick, Society Hill, Timmons ville
Hickory Grove	3	Blacksburg, Sharon, York
Honea Patch	2	Anderson, Belton, Due West
Isle of Palms	1	Charleston, Folly Beach, Mt. Pleasant, Sullivans Island
Joanna	3	Clinton, Laurens, Laurens Rural
Johnston	3	Edgefield, Ridge Spring
Jonesville	3	Pacolet, Union
Lake View	3	Dillon, Dillon, NC, Florence, Latta
Lake Wylie	2	Charlotte, NC, Clover, Gastonia, NC (includes those exchange access lines located in Mill Creek, SC, and vicinity which are a part of the Gastonia, NC exchange), Lake Wylie West, South Crowders Creek, NC, York
Lake Wylie West	2	Clover, Gastonia, NC (includes those exchange access lines located in Mill Creek, SC, and vicinity which are a part of the Gastonia, NC exchange), Lake Wylie, South Crowders Creek, NC, York
Latta	3	Dillon, Dillon, NC, Florence, Lake view
Liberty	2	Central, Easley, Greenville, Pickens, Six Mile
Lyman	1	Blue Ridge, Greer, Inman, Spartanburg

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**SECTION 3 – SERVICE AREAS (Cont'd)**
**3.3 Exchange and UNE Zone Listings**

Marion	2	Florence, Mullins, Nichols
McColl	3	Bennettsville, Blenheim, Clio
Mill Creek	N/A	Belmont, NC, Bessemer City, NC, Clover, Gastonia, NC, Kings Mountain, NC, Lake Wylie, Lake Wylie West, Lowell, NC, Mt. Holly, NC, South Crowders Creek, NC, Stanley, NC
Mt. Pleasant	1	Charleston, Folly Beach, Isle of Palms, Sullivans Island
Mullins	2	Florence, Floyds, Marion, Nichols
Newberry	3	Chapin-Little Mountain North, Prosperity, Whitmire
New Ellenton	2	Aiken, Jackson, portion of Beech Island located within the property boundaries of the Savannah River Site
Newtonville	N/A	Gibson, NC, Laurel Hill, NC, Laurinburg
Nichols	2	Florence, Floyds, Marion, Mullins
Pickens	2	Central, Easley, Greenville, Liberty, Six Mile
Piedmont	1	Greenville
Prosperity	3	Chapin-Little Mountain North, Newberry
Rowland	N/A	Fairmont, NC, Lumberton, NC, Maxton, NC, Parkton, NC, Pembroke, NC, Red Springs, NC, Rowland, NC, St. Pauls, NC
Salem	2	Seneca, Walhalla, Westminster
Seneca	2	Clemson, Salem, Walhalla, Westminster
Sharon	3	Hickory Grove, York
Six Mile	2	Central, Clemson, Easley, Liberty, Pickens
Society Hill	2	Darlington, Florence, Hartsville
Spartanburg	1	Chesnee, Cowpens, Enoree, Inman, Lyman, Pacolet, Woodruff
Springfield-Salley	3	Wagener
St. George	3	Harleyville
Sullivans Island	1	Charleston, Folly Beach, Isle of Palms, Mt. Pleasant
Summerville	1	Charleston, Folly Beach, Isle of Palms
Timmonsville	1	Darlington, Florence, Hartsville, Lamar
Travelers Rest	1	Blue Ridge, Greenville
Union	3	Jonesville, Lockhart
Walhalla	2	Salem, Seneca, Westminster
Westminster	2	Salem, Seneca, Walhalla
Whitmire	3	Newberry
Williamston	2	Anderson, Belton, Pelzer
York	2	Clover, Hickory Grove, Lake Wylie, Lake Wylie West, Rock Hill, Sharon, South Crowders Creek, NC

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**SECTION 4 – BASIC SERVICES AND RATES****4.1 Call Timing for Usage Sensitive Services**

Where charges for a service are specified based on the duration of use, such as the duration of a telephone call, the following rules apply:

**4.1.1** Calls are measured in durational increments identified for each service. All calls which are fractions of a measurement increment are rounded up to the next whole unit.

**4.1.2** Timing on completed calls begins when the call is answered by the called party. Answering is determined by hardware answer supervision in all cases where this signaling is provided by the terminating local carrier and any intermediate carrier(s).

**4.1.3** Timing terminates on all calls when the calling party hangs up or the Company's network receives an off-hook signal from the terminating carrier.

**4.2 Distance Calculations**

The Company does not offer distance sensitive services.

**4.3 Rate Periods for Time of Day Sensitive Services**

The Company does not offer time of day sensitive services.

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**SECTION 4 – BASIC SERVICES AND RATES (Cont'd)****4.4 Local Exchange Service****4.4.1 General**

The Company offers Basic Local Service to residential customers seeking basic local exchange services. Voice Mail and other Custom Calling Features are available to Basic Local Service customers by selecting such services a la carte.

The Company provides Customers with the option of obtaining a Primary Line and Secondary Line per account:

**A. Primary Line**

The initial residential local exchange access line per account.

**B. Secondary Line**

The second or additional residential local exchange access line, billed to the same address as the Primary Line, the Secondary Line will share the monthly call allowance with the Primary Line. The Secondary Line does not automatically include or share any Custom Calling Features. Feature Packages may be purchased separately.

Should a Customer with both lines opt to disconnect the Primary Line, the remaining Secondary Line will automatically convert to a Primary Line with all features and functionality of such, and at the Primary Line monthly recurring rate.

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**SECTION 4 – BASIC SERVICES AND RATES (Cont'd)****4.5 Local Dialtone Service****4.5.1 General**

The Company offers local dialtone service to customers in the Exchange Areas listed in Section 3.1. Local dialtone service allows customers to initiate and terminate calls within their local calling areas.

**4.5.2 Rates**

A.	Service Connection Fee, one-time charge per line:	
	Primary Line	\$49.95*
	Secondary Line	\$49.95*

\* Includes first monthly payment

B.	Initial Monthly Rate	
	Primary Line	\$39.95**
	Secondary Line	\$39.95**

\*\* Applies to invoices for 2<sup>nd</sup> through 5<sup>th</sup> Month after Service Connection

C.	Monthly Rate	
	Primary Line	\$34.95***
	Secondary Line	\$34.95***

\*\* Applies to all invoices following 5<sup>th</sup> Month after Service Connection

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**SECTION 4 – BASIC SERVICES AND RATES (Cont'd)****4.6 Basic Local Service Package****4.6.1 General**

Basic Local Service Package provides customers with local dialtone service and includes the Customer Calling features listed below:

Caller ID – Allows a Customer to see a caller's number previewed on a display screen before the call is answered. Caller ID requires the use of specialized CPE not provided by the Company.

Call Waiting - Call Waiting provides a tone signal to indicate to a Customer already engaged in a telephone call that a second caller is attempting to dial in. This feature permits the Customer to place the first call on hold, answer the second call and then alternate between both calls.

Three Way Calling – Permits the Customer to add a third party to an established connection. When the third party answers, a two-way conversation can be held before adding the original party for a three-way conference.

**4.6.2 Rates**

- A. Service Connection Fee, one-time charge per line:
- |                |          |
|----------------|----------|
| Primary Line   | \$59.95* |
| Secondary Line | \$59.95* |
- \* Includes first monthly payment
- B. Initial Monthly Rate
- |                |           |
|----------------|-----------|
| Primary Line   | \$49.95** |
| Secondary Line | \$49.95** |
- \*\* Applies to invoices for 2<sup>nd</sup> through 5<sup>th</sup> Month after Service Connection
- C. Monthly Rate
- |                |            |
|----------------|------------|
| Primary Line   | \$44.95*** |
| Secondary Line | \$44.95*** |
- \*\* Applies to all invoices following 5<sup>th</sup> Month after Service Connection

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**SECTION 5 –MISCELLANEOUS SERVICES AND RATES****5.1 Service Change Charges**

Non-recurring charges apply to processing Service Orders for new service, for changes in service, and for changes in the Customer's primary interexchange carrier (PIC) code.

**5.1.1 Service Order Charges**

Transfer of Service Charge, Primary Line – applies to the first line of a Transfer of Service Order (TOS), when a customer requests a move or change in physical location. This charge applies whether a customer changes telephone number or not. If, in addition, the Customer requests the telephone number be changed, a separate charge may apply.

Transfer of Service Charge, Secondary Line – applies to the second, or third, etc., line of a Transfer of Service Order (TOS), when a customer requests a move or change in physical location. This charge applies whether a customer changes telephone number or not. If, in addition, the Customer requests the telephone number be changed, a separate charge may apply.

Technician Dispatch Charge – A separate Technician Dispatch Charge applies, in addition to all other charges for the visit, when a visit to the Customer's premises is necessary to isolate a problem reported to the Company but identified by the Company's technician as attributable to Customer-provided equipment or inside wire. This charge also applies for visits by the Company's agents or employees, at the Customer's request, to the Premises of the Customer, when the Customer fails to meet the Company's agent or employees for the prearranged appointment as requested.

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**SECTION 5 –MISCELLANEOUS SERVICES AND RATES (Cont'd)****5.1 Service Order and Change Charges (Cont'd)****5.1.2 Change Order Charges**

Change Order Charges apply to work associated with providing exchange line service or customer-requested changes to existing services. One charge applies for each change order requested by the customer. If multiple changes listed below are requested by the Customer and occur on the same order/request one charge only applies. A Change Order Service Charge applies to the following customer-initiated changes:

Custom Calling Feature Change Order – applies when a Customer requests a change, adding or removing a custom calling feature.

Toll Restriction Fee Order – applies when a Customer requests a change, adding or removing Toll Restriction Service.

Telephone Number Change Order – applies to each telephone number change request/order.

Listing Change Charge – applies when a Customer requests/orders a change to add or delete a white pages listing or requests a change to add/delete listings. This charge also applies to request for Non-Published or Non-Listed numbers.

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**SECTION 5 –MISCELLANEOUS SERVICES AND RATES (Cont'd)****5.1 Service Order and Change Charges (Cont'd)****5.1.3 Rates**

<u>Service Order Charges</u>	<u>Residence</u>
Primary Service Connection Charge	*
Secondary Service Connection Charge	*
Transfer of Service Charge, Primary Line	\$40.00
Transfer of Service Charge, Secondary Line	\$20.00
Technician Dispatch Charge	\$75.00
Service Order Charge	N/A
 <u>Change Order Service Charges</u>	
Custom Calling Feature Change Order	\$15.00
Toll Restriction Fee Order	\$5.00
Telephone Number Change Order	\$5.00
Listing Change Charge	\$5.00

\*Service Connection charges are listed with the rates for each specific service tarified.

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**SECTION 5 –MISCELLANEOUS SERVICES AND RATES (Cont'd)****5.2 Restoration of Service**

A restoration charge applies to the restoration of suspended service and facilities because of nonpayment of bills and is payable at the time that the restoration of the suspended service and facilities is arranged. The restoration charge does not apply when, after disconnection of service, service is later re-installed.

	<u>Residence</u>
Per occasion	\$25.00

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**SECTION 5 –MISCELLANEOUS SERVICES AND RATES (Cont'd)**

**5.3 Reserved for Future Use**

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**SECTION 5 –MISCELLANEOUS SERVICES AND RATES (Cont'd)****5.4 Public Telephone Surcharge**

In order to recover the Company's expenses to comply with the FCC's pay telephone compensation plan effective on October 7, 1997 (FCC 97-371), an undiscountable per call charge is applicable to all intrastate calls that originate from any pay telephone used to access Company provided services. This surcharge, which is in addition to standard tariffed usage charges and any applicable service charges and surcharges associated with service, applies for the use of the instrument used to access Company provided service and is unrelated to the service accessed from the pay telephone.

Pay telephones include coin-operated and coinless phones owned by local telephone companies, independent companies and interexchange carriers. The Public Pay Telephone Surcharge applies to the initial completed call and any reoriginated call (e.g., using the "#" symbol). The Public Pay Telephone Surcharge does not apply to calls placed from pay telephones at which the Customer pays for service by inserting coins during the progress of the call.

Whenever possible, the Public Pay Telephone Surcharge will appear on the same invoice containing the usage charges for the surcharged call. In cases where proper pay telephone coding digits are not transmitted to the Company prior to completion of a call, the Public Pay Telephone Surcharge may be billed on a subsequent invoice after the Company has obtained information from a carrier that the originating station is an eligible pay telephone.

Rate Per Call: \$0.30

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**SECTION 5 – MISCELLANEOUS SERVICES AND RATES (Cont'd)****5.5 Custom Calling Features**

The features in this section are made available to Residential Customers on a per use basis. All features are provided subject to availability. Customers may utilize each feature by dialing the appropriate access code. The Customer will be billed the per feature activation charge shown in the table below each time a feature is used by the Customer. Transmission levels for calls forwarded or calls placed or received using optional calling features may not be acceptable for all or some uses in some cases.

**5.5.1 Feature Descriptions**

Call Forwarding – Fixed, Busy Line No Answer – This feature, when activated, redirects attempted terminating calls to another Customer-specified line. Call originating ability is not affected by Call Forwarding – Fixed, Busy Line No Answer. The calling party is billed for the call to the called number. If the forwarded leg of the call is chargeable, the Customer with the Call Forwarding – Fixed, Busy Line No Answer is billed for the forwarded leg of the call. Calls cannot be transferred to an International Direct Distance Dialing number.

Speed Calling – This feature allows a user to dial selected numbers by means of an abbreviated code. This feature is available in either an 8 number or a 30 number capacity. The Speed Calling list can only accommodate a number consisting of 15 digits or less.

Caller ID - Allows a Customer to see a caller's telephone number previewed on a display screen before the call is answered. Caller ID requires the use of specialized CPE not provided by the Company

Caller ID with Name – Allows a Customer to see a caller's name and number previewed on a display screen before the call is answered. Caller ID with Name requires the use of specialized CPE not provided by the Company.

Call Forwarding – A Customer activated feature that automatically transfers all incoming calls from the Customer's telephone number to another dialable telephone number until the Customer deactivates the feature. If forwarded to a long distance number the Subscriber will incur the long distance charges.

Call Trace – Allows a called party to initiate an automatic trace of the last call received. Call Trace is available on a usage basis only.

Call Blocking – Allows Customer to block calls from different telephone numbers. A screening list is created by Customer either by adding the last number associated with the line (incoming or outgoing) or by pre-selecting the telephone number to be blocked. Callers from such numbers hear an announcement that the calling party is not accepting calls and Customer's phone will not ring.

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**SECTION 5 –MISCELLANEOUS SERVICES AND RATES (Cont'd)****5.5 Custom Calling Features****5.5.1 Feature Descriptions (Cont'd)**

Call Waiting - Call Waiting provides a tone signal to indicate to a Customer already engaged in a telephone call that a second caller is attempting to dial in. This feature permits the Customer to place the first call on hold, answer the second call and then alternate between both calls.

Call Waiting with Caller ID with Name – Call Waiting with Caller ID with Name provides a tone signal to indicate to a Customer already engaged in a telephone call that a second caller is attempting to dial in and allows a Customer to see a caller's name and number previewed on a display screen. This feature permits the Customer to place the first call on hold, answer the second call and then alternate between both calls.

Three Way Calling – Permits the Customer to add a third party to an established connection. When the third party answers, a two-way conversation can be held before adding the original party for a three-way conference.

Call Return - Allows Customer to automatically dial the number of last incoming call, whether or not Customer answered phone.

Anonymous Call Rejection - Allows you to refuse calls from those who have blocked their numbers.

Repeat/Auto Dial – A feature that, when activated, automatically checks a busy number and when the line is free, rings the Customer back and completes the call.

Caller Identification Blocking: Allows the name and number of the calling party to be blocked from being transmitted when placing outbound calls.

Per Call Blocking: To activate per-call blocking, a Customer dials a special code prior to placing a call. Blocking will be activated for that outgoing call only. There is no charge for using per call blocking, and it is provided on an unlimited basis.

Per Line Blocking: When blocking is established on the line, it can be deactivated by dialing a code before each call. This one call unblock allows the name and/or number to be sent for that one call only. There is no charge for per line blocking.

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**SECTION 5 –MISCELLANEOUS SERVICES AND RATES (Cont'd)****5.5 Custom Calling Features****5.5.2 Rates**

<b>FEATURE</b>	<b>RATE</b>	<b>BILLED</b>
Call Forwarding	\$0.50	Per use
Speed Calling	\$3.50	MRC
Caller ID	\$3.50	MRC
Caller ID with Name	\$5.50	MRC
Call Trace	\$0.50	Per use
Call Blocking	\$2.50	MRC
Call Waiting	\$3.50	MRC
Call Waiting with Caller ID with Name	\$5.50	MRC
Three Way Calling	\$3.50	MRC
Call Return	\$0.50	Per use
Anonymous Call Rejection	\$2.50	MRC
Repeat/Auto Dial	\$0.50	Per use
Caller Identification Blocking	\$0.50	Per use
Per Call Blocking	No charge	
Per Line Blocking	No charge	

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**SECTION 5 –MISCELLANEOUS SERVICES AND RATES (Cont'd)****5.6 Directory Assistance Services**

A Customer may obtain assistance, for a charge, in determining a telephone number by dialing Directory Assistance Service.

**5.6.1 Basic Directory Assistance**

The rates specified following apply when Customers request Company assistance in determining telephone numbers of Customers who are located within the State.

A maximum of two (2) requested telephone numbers are allowed per call.

**A. Exemptions**

A business or residence main telephone exchange line may be registered for exemption from Directory Assistance charges where one of the users of the line is considered to be legally blind, visually or physically handicapped, or where the user's handicap prevents the dialing of a telephone in a conventional manner or permits only the dialing of "0." Requests for exemption must be accompanied by certification of the handicap. Acceptable certifications include those signed by a physician, issued by a state agency qualified to certify such handicaps or pre-existing certifications establishing visual or physical inability to use a directory such as those which qualify the handicapped person for an income tax exemption or social security benefits on the basis of blindness or physical disability or for use of the facilities of any agency for the blind.

**B. Allowances**

There are no call allowances for Directory Assistance Service.

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**SECTION 5 –MISCELLANEOUS SERVICES AND RATES (Cont'd)**

**5.6 Directory Assistance Services (Cont'd)**

**5.6.1 Rates**

**A. Basic Directory Assistance**

Direct dialed, per call

Residence  
\$0.75

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**SECTION 5 –MISCELLANEOUS SERVICES AND RATES (Cont'd)****5.7 Busy Line Verification and Emergency Interrupt Service**

Upon request of a calling party, the Company will verify a busy condition on a designated local service line. The operator will determine if the line is clear or in use and report to the calling party. At the request of the Customer, the operator will interrupt the call on the busy line. Emergency Interruption is only permitted in cases where the calling party indicates an emergency exists and requests interruption and is performed once the line status has been determined through the Busy Line Verification process.

If the Customer has the operator interrupt a call, both the Busy Line Verification and the Emergency Interrupt charge will apply.

No charge will apply when the calling party advises that the call is to or from an official public emergency agency. Busy Verification and Interrupt Service is furnished where and to the extent that facilities permit.

The Customer shall indemnify and save the Company harmless against all claims that may arise from either party to the interrupted call or any person.

	<u>Per Call</u>
Busy Line Verification, each occasion	\$2.00
Emergency Interruption	\$2.50

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**SECTION 5 –MISCELLANEOUS SERVICES AND RATES (Cont'd)****5.8 Directory Listing Service****5.8.1 General**

The following rates and regulations apply to standard listings in light face type in the white pages (alphabetical section) of the telephone directory and to the Directory Assistance records of the Company.

Directory listings are limited to such information as is essential to the identification of the listed party. The listing of a service, commodity, or trade name is not permitted unless it is the name, or an integral part of the name, under which the Customer does business.

A listing is limited to one line in the directory, except where in the judgment of the Company, more than one line is required to identify the Customer properly. In such cases, the additional lines required are provided at no extra charge.

Dual name listings are permitted as a regular directory listing for residential service.

Listing services are available with all classes of main telephone exchange service.

**5.8.2 Listings****A. Primary Listing**

One listing, termed the primary listing, is included with each exchange access line and each joint user.



**SECTION 5 – MISCELLANEOUS SERVICES AND RATES (Cont'd)****5.8 Directory Listing Service (Cont'd)****5.8.2 Listings (Cont'd)****B. Additional Listings**

Additional listings may be the listings of individual names of the Customer and members of the Customer's household, tenants of residential Customers who lease the Customer's premises for less than one year and do not occupy the premises at the same time as the Customer, members of a firm, officers of a corporation, employees of the Customer or other persons associated in business with the Customer, a business which the Customer owns and cross reference and alternate number listings.

Ordinarily, all additional listings are of the same address and telephone number as the primary listings, except as provided for joint user and alternate number listings.

Special Types of Additional Listings include:

Duplicate Listings – A listing of another name by which the customer is known, such as a nickname, abbreviated name, a name commonly spelled in more than one way, and a name consisting of several words which the public commonly rearranges. The listing may be complete or in a cross-reference form.

Alternate Telephone Numbers – A listing which refers calling parties to another telephone number at certain hours or on certain days or in case no answer is received on the call to the primary number.

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**SECTION 5 –MISCELLANEOUS SERVICES AND RATES (Cont'd)****5.8 Directory Listing Service (Cont'd)****5.8.2 Listings (Cont'd)****C. Nonpublished Service**

The telephone numbers of nonpublished service are not listed in either the Company's alphabetical directory or Directory Assistance records available to the general public.

Incoming calls to nonpublished service will be completed by the Company only when the calling party places the call by number, and no exception will be made, nor will the Customer be called to determine whether he/she wishes to receive the call, even though it appears that the calling party desires the connection because of an emergency.

The Company is not responsible for any claims made or liability arising from failure to receive calls because of this arrangement.

The Subscriber indemnifies (i.e., promises to reimburse the Company for any amount the Company must pay as a result of) and save the Company harmless against any and all claims for damages caused or claimed to have been caused, directly or indirectly, by the publication of a non-published service or the disclosing of said number to any person.

**D. Nonlisted Service**

Nonlisted service means the Customer's telephone number is not listed in the directory, but it does appear in the Company's Directory Assistance Records.

The Company is not responsible for any claims made or liability arising from failure to receive calls because of this arrangement.

The Subscriber indemnifies (i.e., promises to reimburse the Company for any amount the Company must pay as a result of) and save the Company harmless against any and all claims for damages caused or claimed to have been caused, directly or indirectly, by the publication of a nonlisted service.

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**SECTION 5 –MISCELLANEOUS SERVICES AND RATES (Cont’d)****5.8 Directory Listing Service (Cont’d)****5.8.3 Rates and Charges**

	<u>Per Month</u>
Primary Listings	\$0.00
Additional Listings	
Residence	\$0.75
Nonpublished Service	
Residence	\$1.50
Nonlisted Service	
Residence	\$1.00
Alternate Listings	
Residence	\$0.75

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**SECTION 5 –MISCELLANEOUS SERVICES AND RATES (Cont'd)****5.9 Carrier Presubscription****5.9.1 General**

Carrier Presubscription is a procedure whereby a Customer designates to the Company the carrier which the Customer wishes to be the carrier of choice for intraLATA and interLATA toll calls. Such calls are automatically directed to the designated carrier, without the need to use carrier access codes or additional dialing to direct the call to the designated carrier. Presubscription does not prevent a Customer who has presubscribed to an intraLATA or interLATA toll carrier from using carrier access codes or additional dialing to direct calls to an alternative long distance carrier on a per call basis.

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**SECTION 5 –MISCELLANEOUS SERVICES AND RATES (Cont'd)****5.10 Toll Restriction Service**

Provides for Exchange Access lines or trunks to be restricted from dialing billable toll calls. Directly dialed calls to 700/900 services and operator dialed calls billed to the line are not allowed. This arrangement does allow Calling Card calls, Collect calls, Third Number calls, and direct dialed calls to 911, Directory Assistance and Toll Free services. This service is available where facilities permit.

**5.10.1 Rates**

	<u>Residence</u>
Nonrecurring charge, per line	*
Monthly, per line	\$8.50

\*For nonrecurring charges associated with Toll Restriction Service, see Section 5.1 of this tariff.

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**VERIFICATION**


I, Paul Jarman, am the President and Chief Executive Officer of the Applicant herein. I do hereby verify that I have read the application and am familiar with its contents. The matters stated therein are true and correct to the best of my knowledge and belief.

I do declare under penalty of perjury under the laws of the State of South Carolina that the foregoing is true and correct.

Executed this 23 day of February, 2005.

  
Paul Jarman, President & CEO  
UCN, Inc.

Subscribed and sworn to before me  
this 23 day of February, 2005.

  
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My commission expires 5-1-05

